

RD Windows Terms And Conditions Of Sale



DEFINITIONS

1. In these conditions the following terms shall have the following meanings:
'Company' means RD Windows and for reference in these Terms and Conditions.
'Consumer' means an individual who is not acting for the purposes of his or her business or profession.
'Customer' means any person, a body of persons, firm or Company (acting in its own right or through any employee or agent) with whom the Company enters into a Contract for the sale of Goods or Services by the Company
'Contract' means any Contract described in the above definition of 'Customer'
'Goods and Services' means the products and services offered for sale by the Company, and on its website www.rdwindows.co.uk

TERMS AND CONDITIONS APPLY TO ALL CONTRACTS

2. All Contracts between the Company and the Customer are subject to these terms and Conditions which shall be deemed to be incorporated into any Contract between the Company and all or any of its Customers.
- 2.1 In the event of any conflict between these terms and conditions and any other terms and conditions, whether expressed or implied, incorporated or referred to in any communication from the Customer then these terms and conditions shall prevail and the Customer's terms and conditions shall be excluded in whole for the Contract.

QUOTATIONS

3. Quotations by the Company unless otherwise stated in them shall be open to acceptance within 30 days of the date of the quotation.
- 3.1 No Contract shall come into existence until the Customer's order (however given) is agreed by the Company's acceptance of the same, either verbally or in writing.
- 3.2 No amendment or variation of these terms and conditions or oral promise or commitment related to it shall be valid unless committed to in writing and signed by or on behalf of both parties.
- 3.3 The Company reserves the right to correct any clerical or typographical errors made by its employees at any time.

PRICES

4. All prices shall be paid in sterling unless specifically requested by RD Windows.
- 4.1 All Goods and Services as well as VAT are invoiced at the price prevailing at the time of Contract unless otherwise agreed in writing. All prices published are subject to variation at any time prior to acceptance of the Customer's order by RD Windows.
- 4.2 Price clauses shall take effect on the date of service on the Customer, on notice of change.

PAYMENT

5. Payment terms are strictly within 30 days of the end of the month in which the goods are delivered and in no circumstances shall the Customer be entitled to make any deduction or withhold payment for any reason what so ever, including any retentions unless previously agreed by the Directors of RD Windows.
- 5.1 If you fail to pay us in full on the aforementioned due date we may:
 - 5.1.1 Suspend or cancel any future deliveries
 - 5.1.2 Cancel any discount offered to you by the Company
- 5.1.3 Charge you interest at the rate set under s.5 of The Late Payment Commercial Debts (Interest) Act 1998:
 - a. Calculated (on a daily basis) from the date of the invoice until payment;
 - b. Compounded on the first day of each month; and
 - c. Before and after any judgment (unless a court orders otherwise)
- 5.1.4 Claim fixed sum compensation from you under s.5A of that Act to cover all Credit Control overhead costs; and
- 5.1.5 Recover (under clause 5) the cost of taking legal action to enforce payment.
- 5.2 If you have an approved credit account we may withdraw it or reduce your credit limit or bring forward your due date for payment. We may take any of this action at any time without notice.
- 5.3 You do not have the right to offset any monies you may claim from us against anything you may owe us.

TITLE

- 6.0 Consumers, your statutory rights are unaffected
- 6.1 For the purpose of section 12 of the Sale of Goods Act 1979 RD Windows shall transfer only such title or rights in respect of the Goods or Services that are purchased from a third party as that party had and has transferred to the Company.
- 6.2 The Company operates a standard All Monies Retention of Title clause: which means that even if the Goods or Services are not due for payment to the Company, the Company can at any time enforce the recovery of such Goods as title has not yet passed until all invoices have been paid in FULL.
- 6.3 The risk in any sold Goods or Services, shall pass from the seller to the buyer upon delivery. Legal and beneficial ownership shall not pass to the buyer until the seller has received in cash or cleared funds paid in full.
- 6.4 Until you pay all debts you may owe us:
 - 6.4.1 All Goods supplied by us remain our property
 - 6.4.2 You must store them so that they are clearly identifiable as our property
 - 6.4.3 You must insure them against the risks for which a prudent owner would insure them and hold the policy on trust for us
 - 6.4.4 You may use those Goods and sell them in the ordinary course of your business, but not if:
 - a) We revoke that right (by informing you in writing) or
 - b) You become insolvent or
 - c) Administrators are appointed (therefore the All Monies Retention of Title clause will apply)
- 6.5 You must inform us immediately should clauses 6.4.4 b) and/or c) occur.

RISK, DELIVERY AND PERFORMANCE

- 7.1 The Goods or Services are delivered to the Customer when RD Windows makes them available to the Customer or any agent of the Customer or any carrier (who shall be the Customer agent whoever pays its charges) at the Company's premises or other delivery point agreed by the Company. Once classed as "ready" the customer must take delivery within 14 days. For avoidance of doubt, the terms of business are ex-works.
- 7.2 Risk on the Goods or Services passes when they are delivered to the Customer.
- 7.3 The Company may at its discretion deliver the Goods or Services by installments in any sequence. This action may be the result of Logistics or stock, of which the Company holds no liability.
- 7.4 The Company may deliver to the Customer and the Customer may accept in satisfaction of the Contract a lesser number than the number of Goods and Services ordered.
- 7.5 Any dates quoted by the Company for the delivery of the Goods and Services are approximate only and shall not form part of the Contract and the Customer acknowledges that in the performance expected of RD Windows, no regard has been paid to any quoted delivery dates.
- 7.6 If the Customer fails to take delivery of the Goods or Services, or any part of them, on the due date and fails to provide any instruction or documents required to enable the Goods or Services to be delivered on the due date, the Company may, on giving written notice to the Customer, store or arrange for the storage of the Goods, and on the service of the notice:
 - Risk in the Goods or Services shall pass to the Customer
 - Delivery of the Goods or Services shall be deemed to have taken place, and
 - The Customer shall pay to the Company all costs and expenses including storage and insurance charges arising from its failure
- 7.7 The Company shall not be liable for any penalty, loss, injury, damage or expense arising from any delay or failure in delivery or performance from any cause at all nor shall any such delay or failure entitle the Customer to refuse to accept any delivery or performance of or repudiate the Contract.
- 7.8 Where the Goods have been supplied for export from the U.K, the provisions of this condition 7.9 shall apply notwithstanding any other provision of these conditions.
- 7.8.1 Unless the context otherwise requires, any term or expression which is defined in or given a particular meaning by the provisions of Incoterms shall have the same meaning in these conditions and other contract to which they relate. However there is any conflict between the provisions of Incoterms and these conditions, these conditions shall prevail.
- 7.8.2 The Customer shall take delivery of such Goods and/or Services within 7 days of the Company giving the Customer notice that the Goods are ready for collection. Delivery shall take place at the Customer's premises unless otherwise stated by the Company.
- 7.8.3 The Company shall be under no obligation to give notice under section 32(3) of the Sale of Goods Act 1979.
- 7.8.4 The Company shall have no liability for any claim in respect of any defect in the Goods which would be apparent on inspection and which are made after shipment or in respect of any damage during transit.

CLAIMS NOTIFICATION

- 8.1 Any claims that any Goods or Services have been delivered damaged, are not of the correct quality, or do not comply with their description shall be notified by the Customer to the Company within three days of their delivery.
- 8.2 Any alleged defect shall be notified by the Customer to the Company within three days of the delivery of the Goods or Services or, in the case of any defect which is not reasonably apparent on inspection, within 24 hours of the defect coming to the Customer's attention.
- 8.3 The Company shall be afforded reasonable opportunity to investigate any claims made under this condition and the Customer shall, if so requested in writing by the Company, promptly return any Goods or Services the subject of any claim and any packing materials securely packed and carriage paid to the Company for examination.
- 8.4 The Company shall have no liability with regard to any claim in respect of which the Customer has not complied with the claims procedures in these conditions.

SCOPE OF CONTRACT

- 9.0 Under no circumstances shall RD Windows have any liability of whatever kind for:
 - 9.0.1 Any defects resulting from wear and tear, accident, improper use by the Customer or use by the Customer except in accordance with the instructions or advice of the Company or the manufacturer of any Goods or Services or neglect of any instruction or materials provided by the Customer;
 - 9.0.2 Any Goods or Services which have been adjusted modified or repaired except by the Company;
 - 9.0.3 The suitability of any Goods or Services for any particular purpose or use under specific conditions whether or not the purpose or conditions were known or communicated to the Company;
 - 9.0.4 Any substitution by RD Windows of any materials or components not forming part of any specifications of the Goods or Services agreed in writing by the Company;
 - 9.0.5 Any descriptions, illustrations, specifications, figures as to performance, drawings and particulars of weights and dimensions submitted by the Company contained in the Company's catalogues, price lists or elsewhere since they are merely intended to represent a general idea of the Goods or Services and do not to form part of the Contract or be treated as representations;
 - 9.0.6 Any technical information, recommendations, statement or advice furnished by the Company, its servants or agents not given in writing in response to a specific written request from the Customer before the Contract is made; or
 - 9.0.7 Any variations in the quantities or dimensions of any Goods or Services or changes of their specifications or substitution of any materials or components if the variation or substitution does not materially affect the characteristics of the Goods or Services and the substituted materials or components are of a quality equal or superior to those originally specified.

EXTENT OF LIABILITY

- 10.1 The Company shall have no liability to the Customer for any loss or damage of any nature arising from any breach of any express or implied warranty or condition of the Contract or any negligence, breach of statutory or other duty on the part of the Company or in any way out of or in connection with the performance or purported performance of or failure to perform this Contract except:
 - 10.1.1 For death or personal injury resulting from the Company's negligence; and
 - 10.1.2 As expressly stated in these conditions.
- 10.2 If the Customer establishes that any Goods or Services have not been delivered, have been delivered damaged, are not of the correct quantity or do not comply with their description the Company shall, at its option, replace with similar Goods or Services, or any Goods or Services which are missing, lost or damaged or do not comply with their description, allow the Customer credit for their invoice value or repair any Goods or Services.
- 10.3 If the Customer establishes that any Goods or Services are defective, within 1 year of delivery to the Customer, the Company shall at its option, replace with similar Goods or Services or repair any defective Goods or Services, allow the Customer credit for their invoice value or, to the extent that the Goods or Services are not of the Company's manufacture, assign to the Customer (so far as the Company is able to do so) any warranties given by the manufacturer of the Goods or Services to the Company.
- 10.4 The delivery of any repaired or replacement Goods or Services shall be at the Customer premises or other delivery point specified for the original Goods or Services.
- 10.5 Where the Company is liable in accordance with this condition in respect of some or part of the Goods or Services, the Contract shall remain in full force and effect in respect of the other or other parts of the Goods or Services and no set-off and effect in respect of the other or other parts of the Goods or Services and no set-off or other claim shall be made by the Customer against or in respect of such other or other parts of the Goods or Services.
- 10.6 No claim against the Company shall be entertained for any defect arising from any design or specification provided or made by the Customer or if any adjustments, alterations or other work has been done to the Goods or Services by any person except the Company.
- 10.7 The Company shall not be liable where any Goods or Services, the price of which does not include carriage are lost or damaged in transit and all claims by the Customer shall be made against the carrier. Replacements for such lost or damaged Goods or Services will, if available, be supplied by the Company at the prices ruling at the date of dispatch.
- 10.8 In no circumstances shall the liability of the Company to the Customer under this condition exceed the invoice value of the Goods or Services.
- 10.9 Goods or Services supplied to the Customer cannot be returned unless the Customer obtains from the Company a returns authorization note. All returns will be made at the Customer's risk and expense. The Company reserves the right to refuse any Goods or Services returned if they are not intact in their packaging, clean, unused, undamaged and re-saleable.

GENERAL

- 11.1 The Company may subcontract the performance of these Terms and Conditions or the Contract in whole or in part.
- 11.2 The Customer shall not assign or (without first obtaining the Company's written consent) subcontract these Terms and Conditions or the Contract in whole or in part and it shall be a condition of any such consent to any subcontracting of these Terms and Conditions or the Contract that the customer shall:
 - 11.2.1 Ensure and be responsible for the compliance by any subcontractor with these terms and conditions or Contract;
 - 11.2.2 Include in the sub-Contract provisions consistent with these conditions for the benefit that is enforceable by the Company.
 - 11.2.3 Furnish the Company with copies of any such subcontract upon the Company's request at any time.
- 11.3 The Company shall have lien on Customer property in the Company's possession for all amounts due at any time from the Customer and may use, sell or dispose of that property as agent for and at the expense of the Customer and apply the proceeds in and towards the payment of such amounts on 28 days' notice in writing to the Customer. On accounting to the Customer for any balance remaining after payment of any amounts due to the Company and the costs of sale or disposal the Company shall be discharged of any liability in respect of the Customer's property.
- 11.4 The Company may, at its discretion, suspend or terminate the supply of Goods or Services if the Customer fails to make payment when and as due or otherwise defaults in any of its obligations under the Contract or any other Contract with the Company, or becomes insolvent, has an administrative receiver appointed of its business, is compulsorily or voluntarily wound up or the Company bona fide believes that any of those events may occur, and in case of termination the Customer may forfeit any deposit paid.
- 11.5 If the Goods or Services are manufactured in accordance with any design or specification provided or made by the Customer, the Customer shall compensate the Company in full on demand for all claims, expenses and liabilities of any nature in connection with them, including any claim, whether actual or alleged, that the design or specification infringes the rights of any third party.
- 11.6 Except for any which are expressly agreed to be included in the Goods or Services, all tools, patterns, materials, drawings, specifications and other data provided by RD Windows Ltd shall remain its property and all technical information, patentable, copyright and registered designs arising from the execution of any orders shall become the property of the Company
- 11.7 Export terms FOC/CIF/ex works etc. The Customer is responsible for ensuring that any import regulations of the country or destination are complied with.
- 11.8 Where any of the Company's employees are admitted to the Customer's premises pursuant to the Contract, the Customer undertakes that it will take such measures as are necessary to ensure that, as far as reasonably practicable, its premises and any plant, equipment, articles or substances in such premises are safe and without risk to the health of the Company's employees. The Customer shall indemnify against all loss, claim and demands suffered by the Company as a result of any breach of this condition by the Customer.

CONFIDENTIALITY

- 12.0 The Customer shall not at any time whether before or after the termination of these Terms and Conditions or the Contract divulge or use any unpublished technical information deriving from the Company or any other confidential information in relation to the Company's affairs or business or method of carrying on business.

CANCELLATION

- 13.0 Orders for stock items may be cancelled by written notice at any time before the Goods are allocated to the Contract but if a cancellation notice is received after the Goods have been allocated to the Contract then a packing and handling charge (minimum 20% of invoice value) will be payable by the Customer.

FORCE MAJEURE

- 14.0 The Company shall not be liable for any delay, or other failure to perform any part of the Contract, as a result of any factor outside of RD Windows control, whether an Act of God or otherwise.

INFORMATION AND DATA

- 15.0 Any information and data provided by the Customer to the Company and used by the Company directly or indirectly in the performance of this Agreement shall remain at all times the property of the Company. It shall be identified, clearly marked and recorded as such by the Company on all media and in all documentation.
- 15.1 RD Windows shall take all reasonable precautions to preserve the integrity and prevent any corruption or loss, damage or destruction of the Customer data and information.
- 15.2 In the event of termination of this Agreement, the Company shall when directed to do so by the Customer, instruct all its agents and sub Contractors to erase all information and data provided by the Customer and all copies of any part of the information and data provided from the Company's systems and magnetic data.
- 15.3 The Company agrees to comply and have adequate measures in place to ensure that its staff comply at all times with the provisions and obligations contained in (as amended from time to time):
 - 15.3.1 The Data Protection Act 1998;
 - 15.3.2 The Telecommunications (Data Protection and Privacy) (Direct Marketing) Regulations 1998;
 - 15.3.3 The Consumer Protection Distance Selling Regulations 2000;
- 15.4 All personal data acquired by the Company from any reference agency shall only be used for the purposes of this Agreement and shall not be further processed or disclosed without the consent of the Customer
- 15.5 Nothing in this Agreement shall oblige the Customer to disclose any information to the Company if it is of the view that to do so would be a breach of the Data Protection Act 1998.

GOVERNING LAW

- 16.0 These Terms and Conditions shall be governed by and constructed in accordance with the Law of England and Wales.