

Falkus Joinery Ltd – Terms and Conditions of Sale

1. Definitions

- 1.1 "the Company" means Falkus Joinery Ltd.
1.2 "the Customer" means the individual or body corporate to whom the Goods are to be supplied.
1.3 "Goods" means the goods to be supplied by the Company pursuant to the Contract.
1.4 "the Contract" means the contract for the sale and purchase of the Goods which expressly or impliedly incorporates these Terms and Conditions without amendment.

2. The Contract

- 2.1 Shall expressly or impliedly incorporate these Terms and Conditions without amendment and to the exclusion of all other terms and conditions including but not limited to any terms and conditions contained within or attached to any purchase order or other document delivered to the Company by the Customer.
2.2 Any quotation provided by the Company shall constitute an invitation to treat and not an offer. All purchase orders or other orders for goods shall be deemed to be an offer by the Customer pursuant to these Terms and Conditions. Acceptance of delivery of the Goods shall be conclusive evidence of the Customer's acceptance of these Terms and Conditions, together with the relevant terms contained within the relevant quotation.
2.3 Any quotation provided by the Company shall be valid for a period of 60 days only after the date of its issue, provided that the Company has not previously withdrawn it.
2.4 No variations to, or amendments of, the Contract shall be binding on the Company unless confirmed in writing by the Company. In the event that such written confirmation is not dissented from within 7 days then that variation shall be deemed to have been accepted.

3. The Contract Price

- Unless otherwise stated in writing:
3.1 The Contract Price is exclusive of Value Added Tax ("VAT").
3.2 The Contract Price shall not be subject to any retention or discount.
3.3 The Contract Price shall exclude the cost of delivery.
3.4 The Contract Price payable for the Goods shall be the price contained within the Company's final written quotation to the Customer prior to delivery of the Goods, provided always that such price may be increased by the Company to reflect any of the following, prior to the date of delivery:
3.4.1 any amendment of the order;
3.4.2 any failure by the Customer to provide the Company with any instructions as may reasonably be required by the Company to produce or deliver the Goods;
3.4.3 the performance of the Contract by the Company is delayed or hindered in any way by the Customer;
3.4.4 there is any increase to the Company in the cost of materials, fuel, labour or transport.

4. Payment

- 4.1 Subject to credit being approved in writing by the Company and unless otherwise stated in writing the Contract Price shall be paid no later than the end of the month following delivery of the Goods.
4.2 In the event that credit is not approved in writing by the Company then payment of the Contract Price must be received by the Company in cleared funds prior to delivery of the Goods. For the avoidance of doubt where credit is not approved then payment in cleared funds shall be a condition precedent to the delivery of the Goods.
4.3 The Company reserves the right to request a deposit to be paid to the Company (the amount of which shall be at the Company's sole discretion) prior to delivery of the Goods. Where such deposit is requested then payment in cleared funds of that deposit shall be a condition precedent to the delivery of the Goods
4.4 Payment of all invoices shall be made in England and in the currency stated on the relevant invoice.
4.5 Without prejudice to any other rights the Company may have, in the event that the Customer fails to pay an invoice either in full or in part within 30 days of it being issued, the Company reserves the right to charge simple interest on the entire amount of the invoice at the rate of 8% over the base rate of the Bank of England per annum until payment is made.
4.6 Furthermore without prejudice to any other rights the Company may have, the Company shall be entitled to recover from the Customer all legal, administrative and other costs and expenses incurred as a result of recovering overdue due payments from the Customer.

5. Delivery

- 5.1 Unless otherwise agreed in writing by the parties, the period for delivery of the Goods shall be 6 weeks from the time that the Company has receipt of all necessary information to enable it to manufacture the Goods, which shall be confirmed by the Company in writing.
5.2 In the event that the Customer instructs the Company to vary the specification of the Goods prior to delivery, the Company reserves the right to alter the delivery period stated in the Contract, at its sole and unfettered discretion.
5.3 Any delivery dates provided within the Contract are approximate only and unless otherwise expressly stated in writing the Company shall not be liable for the consequences of any delays in delivery or failure to deliver.
5.4 Time of delivery shall not be of the essence of the Contract.
5.5 It shall be the Customer's responsibility to ensure that the delivery site is accessible to a normal delivery vehicle of the Company's choice and the Customer shall be responsible for unloading the Goods at the delivery site. Any and all damage caused to the Goods during unloading shall be the Customer's responsibility.
5.6 Unless the Customer informs the Company in writing of any claim for loss or damage within 5 days of delivery of the Goods, the Goods shall be deemed to have been delivered in accordance with the Contract.
5.7 In the event that the Customer is unable to accept delivery of the Goods that are manufactured and due for delivery the Company may store the Goods either at its own premises or elsewhere on the Customer's behalf and at the Customer's risk and expense. Where stored at the Company's premises the Customer shall pay the Company the rate of £120.00 per week (or part thereof) per storage bay required to store the Goods. Each storage bay measures approximately 1m x 3m.

6. Specification

- 6.1 The specification of the Goods shall be that which is stated in the Contract.
6.2 The Customer shall be responsible for checking and ensuring the accuracy of the specification.
6.3 It shall be the Customer's sole responsibility to ensure that the Goods stated within the Contract comply with the Building Regulations and any other relevant legal provisions or statutory instruments in force from time to time and the Customer shall indemnify the Company against any liability or adverse consequences sustained or suffered as a result of the Customer's failure to comply with this condition.
6.4 Where the Customer requires the Company to produce drawings for approval prior to manufacture of the Goods, unless otherwise stated the Contract Price shall include for one set of drawings to be provided. In the event that any further drawings are required either as a

result of the Customer altering the specification or requesting additional work, or requesting the Company to alter the drawings for any reason whatsoever, any time spent producing such additional drawings shall be charged to the Customer at the current hourly rate. Any delivery period shall not begin until the drawings are approved by the Customer.

- 6.5 The Company reserves the right to produce drawings for approval using the A, B, C status concept. The Company shall not be liable for any delays, or associated costs incurred where drawings are returned with comments but without confirming the status.

- 6.6 The Company reserves the right to charge the Customer for any variations or additional works to the Goods not specified in the Contract.

7. Cancellations

- 7.1 The Contract may not be terminated by the Customer except with the written consent of the Company and in the event of such agreed cancellation in any event such shall be conditional upon the Customer indemnifying the Company against all losses, liabilities and expenses of whatever nature incurred but the Company arising directly or indirectly from such cancellation including but not limited to drawing time, overhead contribution and materials purchased.

8. Exclusions

- 8.1 Unless otherwise stated in writing, no allowance has been made within the Contract Price for staining or painting of Goods.
8.2 Whilst every attempt is made to eliminate the expansion and shrinkage of external/internal joinery items by allowing for a certain amount of clearance, the Company shall not be held liable for any expansion/shrinkage or swelling of the Goods.
8.3 Timber is a natural product and colour differentials exist. The Company shall not be held liable for such colour differences or discolourations.

9. Defects

- 9.1 In the event that the Goods or any part thereof prove to be defective by reason of materials or workmanship under normal use and service during the period of 3 months from the date of delivery, the Company may at its own expense repair, or at its sole discretion replace, the defective Goods or the defective parts thereof.
9.2 The provisions of Clause 9.1 shall not apply if:
9.2.1 the defect results from fair wear and tear or from negligence or a wilful act on behalf of the Customer;
9.2.2 the Customer fails within 2 weeks after being so requested by the Company to return the alleged defective Goods;
9.2.3 the Customer fails within 2 weeks after being so requested by the Company to permit the Company to visit the Customer's premises for the purposes of inspecting the Goods and investigating the cause of the alleged defect in question;
9.2.4 the Goods are manufactured in accordance with the specification supplied or approved by the Customer and the alleged defect arises out of such specification;
9.2.5 the Goods have been improperly handled by any person (other than a person duly authorised by the Company);
9.2.6 elements of the Goods have been exposed at any one time to different temperatures;
9.2.7 elements of the Goods have been subject at any one time to different stress factors;
9.2.8 the Goods have been exposed to abnormal humidity levels;
9.2.9 the Goods have not been adequately sealed and waterproofed by the Customer prior to exposing the Goods to the elements.
9.3 The Company's liability for any breach of its obligations shall not in any event exceed 10% of the Contract Price.
9.4 Subject to the provisions of this Clause, all warranties and conditions whether implied by statute or otherwise are hereby excluded to the fullest extent permitted by law.
9.5 Notwithstanding the provision of Clause 9.4, nothing in these Terms and Conditions shall:
9.5.1 restrict or exclude any liability for death or personal injury caused by the negligence of the Company; or
9.5.2 affect the statutory rights of a Customer dealing as a consumer (as defined in Section 12 of the Unfair Contract Terms Act 1977).

10. Property, Title, Risk

- 10.1 Risk of loss or damage in the Goods shall pass to the Customer at the time of delivery.
10.2 Notwithstanding delivery and the passing of risk in the Goods, the property of the Goods shall not pass to the Customer until the Company has received in cleared funds payment in full of the Contract Price.
10.3 In the event that the Customer is in default of payment pursuant to Clause 4 the Company reserves the right to re-possess and re-sell or re-use the Goods and for that purpose sever or detach the Goods from anything to which they are attached or fixed without being responsible for any damage reasonably caused thereby.

11. Insolvency of the Customer

- 11.1 The Company may at any time terminate the Contract by giving written notice to the Customer if he:
11.1.1 enters into an arrangement, compromise or composition in satisfaction of his debts; or
11.1.2 without a declaration of solvency, he passes a resolution or makes a determination that he be wound up; or
11.1.3 he has a winding up or bankruptcy order made against him; or
11.1.4 he has appointed to him an administrator or administrative receiver.

12. Assignment

- 12.1 The Company may assign, license or sub-contract all or any part of its rights and obligations under the Contract without the Customer's consent. The Customer may not assign or in any way dispose of its rights and obligations under the Contract without the prior written consent of the Company.

13. Force Majeure

- 13.1 The Company shall not be liable for failure to deliver the Goods or of failure to comply with the Contract through any circumstances beyond its control (but not limited to) an act of God, fire, inclement or exceptional weather conditions, industrial action, hostilities, shortage of labour, plant or materials, breakdown of plant or transport, power failure, late delivery or non-performance of suppliers or sub-contractors, government order or intervention or any other matters beyond the Company's control or of an unexpected or exceptional circumstances.

14. Cross Set-Off

- 14.1 The Customer shall not be entitled to withhold payment of any sums after they become due by reason of any right of cross set-off or counterclaim.

15. Rights of Third Parties

- 15.1 For the purposes of the Contracts (Rights of Third Parties) Act 1999 [and notwithstanding any other provision of this Agreement] this Agreement is not intended to, and does not, give any person who is not a party to it any right to enforce any of its provisions.

16. Governing Law and Jurisdiction

- 16.1 The validity, construction and performance of this Agreement shall be governed by English law and shall be subject to the exclusive jurisdiction of the English courts to which the parties submit.