

# Conditions of Sale



## 1 Definitions

- 1.1 'Buyer' means the person who buys or agrees to buy the goods from the Seller.
- 1.2 'Conditions' means the terms and conditions of sale set out in this document as amended from time to time and any special terms and conditions agreed in writing by the Seller.
- 1.3 'Contract' the contract between the Seller and the Buyer for the sale and purchase of the Goods in accordance with these Conditions
- 1.4 'Goods' means the articles and where applicable the services which the Buyer agrees to buy from the Seller
- 1.5 'Price' means the price for the Goods excluding VAT (unless stated otherwise in writing).
- 1.6 'Seller' means 5 Star Construction Services Ltd, Units 1 & 2 Tenat Works, Worcester Road, Kidderminster, Worcestershire DY10 1JR.
- 1.7 'Force Majeure Event' an event, circumstance or cause beyond a party's reasonable control, including but not limited to any act of God, war, strike, lockout, industrial action, fire, flood, drought or tempest.
- 1.8 'Order' the Buyer's order for the Goods as set out in the Buyer's written acceptance of the Seller's quotation or in the Buyer's purchase order form, or as the case may be.
- 1.9 'Bespoke' items are those which are made to measure to a Buyer's specific requirements, either in terms of design, colour, or measurements. Almost all products that 5 Star sell are made to measure (bespoke) except for fascias, soffits and guttering for example.

## 2 Conditions applicable

- 2.1 These Conditions shall apply to all contracts for the sale of Goods by the Seller to the Buyer to the exclusion of all other terms and conditions including any terms or conditions which the Buyer may seek to impose, incorporate or purport to apply under any quotations, purchase order, confirmation of order, sales or similar document.
- 2.2 An Order for Goods shall be deemed to be an offer by the Buyer to purchase Goods in accordance with these Conditions. The Buyer is responsible for ensuring that the terms of the Order any or any applicable specification are complete and correct
- 2.3 Acceptance of delivery of the Goods shall be deemed conclusive evidence of the Buyer's acceptance of these Conditions.
- 2.4 The Buyer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Buyer that is inconsistent with these Conditions
- 2.5 Any variation to these Conditions (including any special terms and conditions agreed between the parties) or to the other terms of the Contract including the specification of the Goods shall be inapplicable unless agreed in writing by the Seller and any such variation to the Contract requested by the Buyer may result in an increase in the Price. The Buyer is advised that Goods are manufactured to the Seller's particular requirements and may not be re-saleable to third parties.
- 2.6 Any samples, drawings, descriptive matter or advertising produced by the Supplier and any descriptions or illustrations contained in the Supplier's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods referred to in them. They shall not form part of the Contract nor have any contractual force.
- 2.7 The Seller has the right to photograph the work area before, during, and after the proposed work. All photographic documentation becomes the property of the Seller which may be used for marketing or website distribution. No personal names or addresses of photographic materials will be displayed or disclosed without prior approval by the owner. Should the Buyer wish to opt out of the use of photographic documentation for marketing or website distribution the Buyer must be notified in writing within 14 days of the purchase contract being signed.

## 3 Cancellation by Seller

The Seller may cancel this contract at any time before the Goods are delivered by giving written notice. On giving such notice the Seller shall promptly repay to the Buyer any sums paid in respect of the Price. The Seller shall not be liable for any loss or damage whatsoever arising from such cancellation.

## 4 Cancellation by Buyer

- 4.1 If you wish to cancel your order for bespoke products you can do so within 7 days of the date of signing your sales contract whereby the seller will refund any monies paid in full. You should send your cancellation letter by recorded delivery to the seller's address as given on the final page of this agreement. On giving such written notice, the Seller shall cease to be bound to perform the Contract.
- 4.2 If you wish to cancel your order after 7 days your deposit is non-refundable in all circumstances. It may still be possible to cancel without further payments being due, providing no part of the order has gone into manufacture. We will let you know whether it is possible to cancel without further costs so that you can make a decision accordingly.
- 4.3 Non-bespoke orders can be cancelled at any time and the deposit refunded, up to 14 days after delivery of the goods to your home - provided that installation has not started, and we have not incurred any costs (e.g. for access equipment). If you request to cancel more than 14 days after the delivery of the products, once the installation has started or access equipment has been erected, your deposit cannot be refunded.

## 5 The Price and payment

- 5.1 The Price shall be the Seller's quoted price. Unless stated otherwise in writing, the Price is exclusive of VAT which shall be due at the rate ruling on the date of the Seller's invoice.

- 5.2 Payment of the Price and VAT shall be due forthwith upon delivery of the Goods to the Buyer or upon completion of any installation of the Goods which the Buyer has contracted in writing to undertake. Payment to be made in cash or by cheque, bank draft or money order in favour of the Seller and crossed "Account Payee".
- 5.3 Any invoice outstanding beyond our payment terms will be referred to the 5 Star Legal Team and will be subject to a surcharge of 15% plus vat to cover the collection cost incurred. This surcharge together with all other charges and legal fees incurred will be the responsibility of the Buyer and will be legally enforceable.
- 5.4 If the Buyer alleges that any part of the installation work undertaken by the Seller is incomplete or unsatisfactory, in relation to the appropriate payment of the stage in question, for example delivery of goods, an amount stipulated by the Seller may be withheld by the Buyer until such time that element of the works are complete. Failure to meet these terms may result in the works being placed on hold.
- 5.5 Where the Seller has agreed to accept payment by instalments then if the Buyer fails to pay any instalment upon the due date the whole of the balance shall become immediately payable and shall bear interest at the rate referred to above until payment is received in full.
- 5.6 The Buyer shall be responsible for any costs incurred by the Seller in enforcing its rights under this Contract, such costs to be paid on an indemnity basis as a debt due from the Buyer to the Seller.
- 5.7 The Buyer agrees to pay to the Seller in addition to the Price the costs incurred by the Seller in obtaining any scaffolding required to perform any installation work.
- 5.8 The Seller may invoice the Buyer for the Goods on or at any time after completion of delivery or installation of the Goods.
- 5.9 The Buyer is fully committed once the Order is signed off by the Buyer and forwarded for manufacture and the full deposit and balance are now due.
- 5.10 If the survey undertaken by the Seller reveals significant extra work the cost of this work will be added to the total contract price. The Buyer may subsequently cancel, and this must be done in writing within 3 days of being notified of the extra work required by the Seller. In these circumstances the Seller will return any deposit paid within 28 days of receiving the Buyer's cancellation notice. What constitutes significant extra works shall be the sole discretion of the Seller.
- 5.11 The Seller shall carry out a survey providing that the Buyer allows reasonable access to the address advised by the Buyer overleaf in that period. The Seller will undertake this to satisfy itself of:
  - a) The appropriateness of the total contract price
  - b) The technical viability of the works
  - c) To identify as early as possible the need, if any, for significant extra works.
- 5.12 Unless otherwise agreed, the Buyer shall pay to the Seller a deposit of at least 10% of the total contract price upon the signing of the order and/or the Seller's contract by the parties and before the Seller has undertaken any further work.
- 5.13 Where a Buyer is arranging their own finance for the product, the Seller reserves the right to defer commencement of manufacture until the Buyer has produced a written offer from their finance provider.
- 5.14 The cut-off point for changing payment method, to or from finance, is at the point of survey and no later.

## **6 Listed Buildings & Conservation Areas**

- 6.1 It is the Buyer's responsibility to establish whether the Premises are either a listed building or within a conservation area as defined by Law. The Seller shall be under no obligation whatsoever in the event of any enforcement or other action by the Local Authority or any other person or body.
- 6.2 Should the approvals necessary prove to be obtainable only by the revision of the order details the Seller will quote a revised Total Contract Price to the Buyer. In the event that the Buyer does not accept the revised Total Contract Price within 3 days of quotation, the seller may cancel the contract. If the necessary approvals are not forthcoming, then the Seller will likewise be at liberty to cancel the contract.
- 6.3 Upon cancellation of the contract under these circumstances the Seller will refund such monies as appropriate taking into account orders placed, work done and services rendered by it.

## **7 The Goods**

- 7.1 The quantity and description of the Goods shall be as set out in the Seller's Purchase Contract.
- 7.2 The Seller shall not be obliged to supply Goods conforming exactly with any samples of products supplied to the Buyer or used by the Seller for demonstration purposes. The Seller may from time to time make changes in the specification of the Goods which are required to comply with any applicable safety or statutory requirements or which do not materially affect the quality or fitness for purpose of the Goods.
- 7.3 The Buyer shall be responsible at his expense for obtaining any permits, planning permission, licences or consents required for the supply and/or fitting of the Goods.
- 7.4 Where the Seller contracts in writing to undertake associated building work the Seller will use reasonable endeavours to match new to existing brick or stonework etc but will not be responsible for discrepancies due to weathering or other natural changes.
- 7.5 The Buyer is responsible at his cost for ensuring that the surrounding structure, including brickwork and lintels etc, is/are sufficient to support the Goods and the Seller will not be liable for any damage resulting from the Buyer's failure to comply with this obligation.
- 7.6 Except where the Seller is aware of any damaged glass and is arranging for its replacement, the Seller shall not be liable to the Buyer in respect of any damage to glass which has not been notified to the Seller following completion of installation.

## **8 Remedial and Ancillary Work**

- 8.1 The Seller accepts no liability in respect of glass breakages that are due to the fault or neglect of the Buyer or a third party. Glass manufacturers will not give a guarantee covering minor imperfections or shade variations and consequently the Seller is not liable hereunder for any such imperfections or shade variations.
- 8.2 Unless otherwise specified in this contract, the Seller will not undertake the resiting of gas, electrical wiring, plumbing or telephone installations. The Buyer is responsible for any such work required. It is the Buyer's responsibility to make available the use of water and electricity at no cost to the Seller.
- 8.3 The Seller accepts no liability for any damage resulting from structural or other defects in the premises.
- 8.4 The Total Contract Price does not include the repair or replacement of rotten wood found during the course of carrying out the work unless already included in this contract. The Buyer hereby agrees to pay for such additional work, which shall constitute significant extra works, which will be billed at the seller's hourly rate for the time spent as applies from time to time, plus materials. The present hourly rate is £75.00 per hour including VAT.

## **9 Warranties and Exclusions**

- 9.1 The Seller undertakes to the Buyer to repair, at the Seller's own cost (or at the Seller's discretion to replace) any defect discovered in the Goods for the prevailing guarantee period issued at the point of sale.
- 9.2 The Guarantee referred to in clause 9.1 ("the Guarantee") is fully depicted in the Guarantee document issued to the Buyer upon completion.
- 9.3 The Guarantee does not apply to:
  - a) defects which have occurred during installation where the Seller has not contracted with the Buyer to carry out such installation
  - b) defects caused by normal wear and tear, wilful damage, negligence, improper and unreasonable use or mistreatment of the Goods
  - c) defects caused where the Buyer alters or repairs such Goods without the written consent of the Buyer
  - d) any defects or imperfections contained in the glass supplied in the Goods arising from the glass manufacturing process.
  - e) any landscaping, building, plumbing, electrical or plastering works, conservatory roof glass after 10 years and discolouring of ancillary products that were undergone or supplied during the installation of the goods.
- 9.4 Any electrical and/or mechanical goods will assume the standard manufacturer's warranty.
- 9.5 All other specific details will be detailed in the separate Guarantee document.
- 9.6 The Buyer shall allow the Seller access to the Goods at reasonable times and upon reasonable notice from the Seller to inspect any alleged defect in the Goods and, if necessary, to carry out any repairs to the Goods.
- 9.7 The Seller's liability to the Buyer, whether for any breach of contract or otherwise shall not in any event exceed the Price.
- 9.8 The liability of the Seller under the Guarantee shall not apply if the Buyer has failed to pay the Price in accordance with clause 5.
- 9.9 The Seller shall only be liable for damage caused during installation work carried out by the Seller where such damage is caused as a result of the negligence of the Seller, its agents or employees and in any event the amount of such liability shall not exceed £3,000.
- 9.10 The liability of the Seller in respect of any claims for inconvenience, indirect or consequential loss, or inconvenience shall not exceed £250.00. This will be deemed as a goodwill gesture and not compensation.
- 9.11 Leaded and "Georgian" effect glass may have slight variations and the Seller cannot guarantee to completely match patterns to existing fittings.
- 9.12 The Seller does not guarantee that its products will eliminate any condensation in the structure.
- 9.13 Any claims under the Guarantee or otherwise must be notified in writing to the Seller within 14 days of the Buyer becoming aware of the matter.
- 9.14 This clause 9 shall survive termination of the Contract
- 9.15 Nothing in these Conditions shall restrict or exclude liability for death or personal injury caused by the negligence of the Seller or affect the statutory rights of a buyer dealing as a consumer.
- 9.16 These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier

## **10 Delivery of the Goods**

- 10.1 Delivery of the Goods shall be made to the Buyer's address or such other address for delivery as may be notified in writing by the Buyer to the Seller.
- 10.2 The Seller will endeavour to meet anticipated delivery times within a reasonable timeframe and within any time period advised to the Buyer. Time shall not be of the essence for delivery and completion of such works under any circumstances
- 10.3 The Buyer shall upon reasonable notice from the Seller allow access to the Seller and its servants, agents and employees to the premises of the Buyer to enable the Seller to effect delivery of the Goods and carry out any installation works. Failure of the Buyer to comply with this obligation shall be deemed to be a repudiatory breach of the Contract and shall entitle the Seller to terminate the contract and claim damages from the Buyer including damages for loss of profit.
- 10.4 Prior to delivery the Buyer shall allow access to the Seller and its employees, servants or agents, to the premises of the Buyer at reasonable times and on reasonable notice from the Seller to enable any survey or preparatory work to be carried out. Failure by the Buyer to comply with this obligation shall be deemed to be a repudiatory breach of contract and the Seller shall have the rights and remedies referred to in clause 8.3.

- 10.5 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. The Seller shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Buyer's failure to provide the Seller with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 10.6 Notwithstanding the above, the Seller will not be liable for any losses caused by delays beyond its reasonable control or where a Buyer has acted to prevent completion of the contract. The Seller will not be liable for any loss of earnings incurred during installation suffered by the Buyer.
- 10.7 It is the responsibility of the Buyer to undertake basic preparation work before installation, including the removal of curtains, blinds, pelmets, ornaments and mats that are adjacent to areas where work is to be carried out, and also for their reinstatement once the work is completed.

## **11 FENSA**

- 11.1 To comply with the current Building Regulations the Seller is a registered member of FENSA (Fenestration Self Assessment). This means that the Seller can certify that its own installations meet Building Regulations. FENSA will provide the Buyer with a certificate of compliance within 28 days of payment being made in full. Under the FENSA scheme the Seller is obliged to offer the Buyer an Insurance Backed Guarantee to cover their installations.
- 11.2 The Buyer's details will be passed to the Insurance company upon payment being made in full and a certificate of insurance will be issued by the insurers to the Buyer within 28 days. If the Buyer has any queries concerning the FENSA certificate or in relation to the FENSA scheme generally please contact FENSA direct. FENSA, Newspaper House, 40 Rushworth Street, London, SE1 0RB 02076453700

## **12 Complaints Procedure**

The Seller's complaints procedure can be found in full at <https://www.5starwindows.co.uk/complaints-procedures/>

## **13 Supply Only Contracts**

All measurements and specifications given are the responsibility of the Buyer. The Seller will not be liable for any of its products, measurements or specifications given under a "supply only contract".

## **14 Showhome Conditions**

- 14.1 To be eligible for a showhome price the installation must be clearly visible from a busy road or footpath.
- 14.2 The Seller's 5 Star display board (610x810) must be clearly displayed for at least 90 days from completion of installation.
- 14.3 Failure or breach by the Buyer to comply with the above conditions will entitle the Seller to invoice the Buyer for the difference in respect of the showhome discount given to the Buyer.

## **15 Standby Fit Conditions**

- 15.1 To be eligible for a standby fit price there are 3 conditions:-
1. The Buyer should allow access to the property to survey the proposed work at a time convenient to the Seller's surveyor.
  2. The Seller may only give 48hrs notice (Minimum) before the proposed work is started during the designated standby month.
  3. The Buyer must accept the quotation during the initial visit by the Seller's representative.

## **16 Title and Risk**

- 16.1 Title shall pass on full payment of the Goods.
- 16.2 The risk in the goods shall pass from the seller to the buyer upon delivery of such goods to the Buyer. However, notwithstanding delivery and the passing of risk in the goods, title and property in the goods, including full legal and beneficial ownership, shall not pass to the Buyer until the seller has received in cash or cleared funds payment in full for all goods delivered to the Buyer under this and all other contracts between the seller and the Buyer for which payment of the full price of the goods thereunder has not been paid. Payment of the full price of the goods shall include the amount of any interest or other sum payable under the terms of this and all other contracts between the seller and the Buyer under which the goods were delivered.

## **17 Notices**

Any notice required to be served pursuant to this contract of sale shall be in writing and served by recorded delivery on the Seller at 5 Star Windows & Conservatories., Units 1 & 2 Tenat Works, Worcester Road, Kidderminster, Worcestershire DY10 1JR or such other address as the Seller may from time to time notify to the Buyer and on the Buyer at the Buyer's registered office or principal place of business.

## **18 Headings**

All headings are for ease of reference only and shall not affect the construction of this contract.

## **19 Severance**

If any provision or part-provision of this Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract. If any provision of the Contract is deemed deleted under this clause 19 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

## **20 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 results from a Force Majeure Event. In such circumstances,

the affected party shall be entitled to a reasonable extension of the time for performing such obligations.

**21 Entire Agreement**

- (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 the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

**22 Data Protection**

Please refer to our privacy policy which can be found at <https://www.5starwindows.co.uk/legal/>

**23 Third Party Rights**

Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

**24 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.

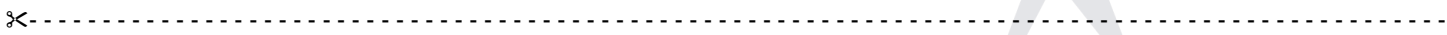
**25 Jurisdiction**

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.

The Seller shall be entitled to sub-contract any of its obligations under the Contract.

From October 2011: All private drains were adopted by the local water authorities and therefore permission may be required if building over or within 3 metres of the main drain system, subject to your location on the run. That being the case and subject to a report by our surveyor, then additional fees and costs may be involved and advised accordingly.

<i>I acknowledge that I have read and understood the terms and conditions, and I agree to abide by the terms and conditions as set out.</i>	
Signature: _____	Name (Print): _____
Date: _____	



**CONDITION OF SALE CANCELLATION FORM**

(Complete, detach and return this form ONLY IF YOU WISH TO CANCEL THE AGREEMENT)

If, after reading, you are in any way unsure of your rights and obligations under this agreement please ring the number on the first page of this agreement. If you have the right to cancel this Contract under Clause 4 of the Terms and Conditions, then you can do so by sending or taking a written notice of cancellation to:

**5 STAR WINDOWS & CONSERVATORIES Units 1 & 2 Tenat Works, Worcester Road, Kidderminster, Worcestershire DY10 1JR**

Cancellation must be made in writing within 7 days from date of contract.

I/We\* hereby give notice that I/We\* wish to cancel the agreement

\* Delete as appropriate

Buyer Name(s): \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Postcode: \_\_\_\_\_

Date of Order: \_\_\_\_\_

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

Cut out and Post by Recorded Delivery to: 5 STAR WINDOWS & CONSERVATORIES Units 1 & 2 Tenat Works Worcester Road, Kidderminster Worcestershire DY10 1JR