

# TERMS AND CONDITIONS FOR THE SALE OF GOODS 2017 (SUPPLY ONLY PURCHASE)

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 and any special terms and conditions agreed in writing by the Seller
  - 1.3 "Contract" means the contract incorporating the Conditions for the purchase and sale of the Goods and the supply and acquisition of the Services
  - 1.4 "Goods" means the articles (including any instalment of the articles or any parts of them), which the Buyer agrees to buy from the Seller
  - 1.5 "Seller" means David Salisbury Joinery Limited trading as David Salisbury
  - 1.6 "Services" means the service (if any) provided by the Seller
  - 1.7 "Specification" includes any plans, drawings, data or other information relating to the Goods or Services
  - 1.8 "Writing" includes telex, cable, facsimile transmission and all similar means of communication
  - 1.9 The "Current Price List" means the price list from which the Seller is quoting for new work at the date in question.
2. **Basis of Sale**
  - 2.1 These Conditions shall apply to all Contracts for the sale of Goods by the Seller to the Buyer or any Services provided by the Seller to the Buyer to the exclusion of all other terms and conditions including any terms and conditions which the Buyer may purport to apply under any purchase order, confirmation of order or similar document
  - 2.2 All orders for Goods and/or Services shall be deemed to be an offer by the Buyer for the purchase of Goods and/or acquisition of the Services pursuant to these Conditions
  - 2.3 Any variation in these Conditions (including any special terms and conditions agreed between the parties) shall only apply if agreed in writing by the authorised representative of the Seller
  - 2.4 The Seller's employees or agents are not authorised to make any representations concerning the Goods and/or the Services unless confirmed by the Seller in writing. In entering into the Contract the Buyer acknowledges that it does not rely on and waives any claim for breach of any such representations, which are not so confirmed
  - 2.5 Any advice or recommendation given by the Seller or its employees or agents to the Buyer or its employees or agents as to the application or use of the Goods and/or Services which is not confirmed in writing by the Seller is followed or acted upon entirely at the Buyer's own risk, and accordingly the Seller shall not be liable for any such advice or recommendation which is not so confirmed
  - 2.6 Any typographical, clerical, or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller
3. **Orders and Specifications**
  - 3.1 The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any order and for giving the Seller any necessary information relating to the Goods and/or Services within a sufficient time to enable the Seller to perform the Contract in accordance with its terms
  - 3.2 The quantity, quality and description of and any specification for the Goods and/or Services shall be those set out in the Seller's quotation (if accepted by the Buyer) or the Buyer's order (if accepted by the Seller)
  - 3.3 If the goods are to be manufactured or any process is to be applied to the Goods by the Seller and/or if the Services are to be provided in either case in accordance with the specification submitted by the Buyer, the Buyer shall indemnify the Seller against all loss, damages, costs and expenses awarded against or incurred by the Seller in connection with or paid or agreed to be paid by the Seller in settlement of any claim for infringement of any patent, copyright, design, trademark or other industrial or intellectual property rights of any other person which results from the Seller's use of the Buyer's specification
  - 3.4 The Seller may from time to time make changes in the specification of the Goods and/or the supply of the Services which are required to comply with any applicable safety or statutory or EC requirements or which do not materially affect the quality or fitness for the purpose of the Goods
  - 3.5 No order which has been accepted by the Seller may be cancelled by the Buyer except with the agreement in writing of the Seller and on terms that the Buyer shall indemnify the Seller in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Seller as a result of cancellation
4. **Price of Goods and Services**
  - 4.1 The price of the Goods and/or Services shall be the Seller's quoted price or, where no price has been quoted, the price stipulated in the Seller's published price list current at the date of acceptance of the order. All prices quoted are valid for 30 days only or until earlier acceptance by the Buyer, after which time the Seller may alter them without giving notice to the Buyer
  - 4.2 The Seller reserves the right, by giving notice to the Buyer at any time before delivery, to increase the price of the Goods and/or Services to reflect any increase in the cost to the Seller which is due to factors occurring after the making of the Contract for sale which are beyond reasonable control of the Seller (including, without limitation, foreign exchange fluctuations, taxes and duties, increase in the cost of labour, materials and other manufacturing costs, any change in delivery dates, quantities or specifications for the Goods and/or Services which is or are requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions)
  - 4.3 In the event the delivery is delayed by 12 months or more from the date of the Contract, for reasons beyond the Seller's control, the Seller reserves the right to adjust the price to be in line with the Current Price List at the date of manufacture of the Goods
  - 4.4 The price is exclusive of any applicable VAT, which shall be due at the rate ruling on the date of the VAT invoice
  - 4.5 The price is the Seller's ex-works price and where the Seller agrees to arrange for the goods to be delivered otherwise than at the Seller's premises the Buyer shall be liable to pay the Seller's charges for transport, packaging and insurance
5. **Terms of payment**
  - 5.1 The Seller shall be entitled to invoice the Buyer for the price of the Goods and/or Services prior to delivery of the Goods or provision of the Services unless the Goods are to be collected by the Buyer (or the Buyer wrongfully fails to take delivery of the goods), in which event the Seller shall be entitled to invoice the Buyer for the price at any time after the Seller has notified the Buyer that the goods are ready for collection (as the case may be)
  - 5.2 The Buyer shall pay the price of the Goods and/or Services prior to delivery of the goods and/or Services. The Time of payment of the price shall be of the essence of the Contract
  - 5.3 The Buyer may not withhold payment of any invoice or other amount due to the Seller by reason of any right of set-off or counterclaim which the Buyer may have or allege to have or for any reason whatever
  - 5.4 If the Buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to:
    - 5.4.1 cancel the Contract or suspend any further deliveries of Goods and/or any supply of Services to the Buyer
    - 5.4.2 appropriate any payment made by the Buyer to such of the Goods or Services (or the Goods or Services supplied under any other Contract between the Buyer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer), and
    - 5.4.3 charge the Buyer interest (both before and after any judgement) from day to day on the amount unpaid at the rate of 3% per annum above Barclays Bank PLC base rate from time to time until payment in full is made
6. **Delivery of Goods**
  - 6.1 Delivery of the Goods shall be made by the Seller giving notice to the Buyer that the Goods are ready for collection from the Seller's premises or, if some other place for delivery is agreed by the Seller, by the Seller delivering the Goods to that place
  - 6.2 Any dates quoted for delivery of the Goods and/or performance of the Services are approximate only and the Seller shall not be liable for any delay in delivery of the Goods or performance of the Services howsoever caused. The time for delivery or performance shall not be of the essence unless previously agreed by the Seller in writing. The Goods may be delivered and/or the Services performed by the Seller in advance of the quoted delivery or performance date upon giving reasonable notice to the Buyer
  - 6.3 Where the Goods are to be delivered and/or the Services performed in instalments each delivery or performance shall constitute a separate Contract and failure by the Seller to deliver any one or more of the instalments and/or perform any of the Services in accordance with these Conditions and/or any claim by the Buyer in respect of any or more instalments shall not entitle the Buyer to treat the Contract as a whole repudiated
  - 6.4 If the Seller fails to deliver the Goods and/or perform the Services for any reason other than any cause beyond the Seller's reasonable control or the Buyer's fault, and the Seller is in consequence liable to the Buyer, the Seller's liability shall be limited to the excess (if any) of the costs to the Buyer (in the cheapest available market) of similar Goods or Services to replace those not delivered or performed over the price of the Goods or Services
- 6.5 If the Buyer fails to take delivery of the Goods and fails to pay for the goods and/or Services or fails to give the Seller adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Seller's fault) then, without prejudice to any other right or remedy available to the Seller, the Seller may
  - 6.5.1 store the Goods until actual delivery and charge the Buyer for the reasonable cost (including insurance) of storage; or
  - 6.5.2 sell the Goods at the best price readily obtainable and charge the Buyer for any shortfall below the price under the Contract
7. **Risk and Property**
  - 7.1 Risk of damage to or loss of the Goods shall pass to the Buyer
    - 7.1.1 in the case of Goods to be delivered at the Seller's premises, at the time when the Seller notifies the Buyer that the Goods are available for collection; or
    - 7.1.2 in the case of Goods to be delivered otherwise than at the Seller's premises at the time of delivery or, if the Buyer wrongfully fails to take delivery of the Goods, at the time when the Seller has tendered delivery of the Goods
    - 7.1.3 The second payment specified on the order form is payable prior to the delivery date, which is confirmed on receipt of signed working drawings. If the Buyer delays the delivery date for any reason, payment of the second payment will become due seven days after the date that delivery should have taken place, whether the Goods have been manufactured or not
  - 7.2 Notwithstanding delivery and the passing of risk in the Goods or any other provision of these Conditions, the property in the Goods shall not pass to the Buyer until the Seller has received in cash or cleared funds payment in full of the price of the Goods and all other Goods sold or agreed to be sold by the Seller to the Buyer for which payment is then or may become due
8. **Warranties**
  - 8.1 Subject to the conditions set out below the Seller warrants that the Goods will correspond with their specification at the time of delivery (and will be free from defects in material and workmanship for a period of 5 years from the date of their initial use or 5 years from delivery whichever is the first to expire)
  - 8.2 The Seller shall be under no liability under the above warranty or otherwise
    - 8.2.1 in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Buyer
    - 8.2.2 in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Seller's instructions (whether oral or in writing) misuse or alteration or repair of the Goods without the Seller's approval
    - 8.2.3 if the total price for the Goods has not been paid by the due date for payment
    - 8.2.4 to any person other than the Buyer who shall not be permitted to assign the benefit thereof to any third party
  - 8.3 The above warranty does not extend to parts, materials or equipment not manufactured by the Seller, in respect of which the Buyer shall only be entitled to the benefit or any such warranty or guarantee as is given by the manufacturer to the Seller
  - 8.4 Subject as expressly provided in these Conditions, all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law
  - 8.5 The Buyer shall inspect the Goods promptly on delivery. Any claim by the Buyer which is based on any defect in the quality or condition of the Goods or their failure to correspond with specification shall (whether or not delivery is refused by the Buyer) be notified to the Seller within 7 days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure. If delivery is not refused, and the Buyer does not notify the Seller accordingly, the Buyer shall not be entitled to reject the Goods and the Seller shall have no liability for such defect or failure, and the Buyer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract
  - 8.6 Where any valid claim in respect of any of the Goods which is based on any defect in the quality or condition of the Goods or their failure to meet specification is notified to the Seller in accordance with these Conditions, the Seller shall be entitled to replace the Goods (or the part in question) free of charge or, at the Seller's sole discretion, refund to the Buyer the price of the Goods (or a proportionate part of the price), but the Seller shall have no further liability to the Buyer
  - 8.7 No defect in the quality or condition of part of the Goods and no failure of part to correspond with specification shall entitle the Buyer to reject the part or to reject the whole or any of the Goods
  - 8.8 Except in respect of death or personal injury caused by the Seller's negligence, the Seller's liability to the Buyer by reason of any representation, or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the contract, for any consequential loss or damage (whether for loss of profit or otherwise), costs, expenses, or other claims for consequential compensation whatsoever (and whether caused by the negligence of the Seller, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods or their use or resale by the Buyer, except as expressly provided in these Conditions, shall be limited to the price of the Goods (or a proportionate part of the price)
    - 8.8.1 if clause 8.8 is found to be unreasonable then the limitation of the Seller's liability to the Buyer is the contract price (or a proportionate part of the price)
  - 8.9 If any clause or part of a clause herein is found to be unreasonable then it will not affect the validity of the remainder of the Seller's Terms and Conditions of Sale
  - 8.10 The Seller shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Seller's obligations in relation to the Goods or the Services, if the delay or failure was due to any cause beyond the Seller's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Seller's reasonable control:
    - 8.10.1 Act of God, explosion, flood, tempest, fire or accident
    - 8.10.2 War, threat of war, sabotage, insurrection, civil disturbance or requisition
    - 8.10.3 acts, restrictions, regulations, byelaws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority
    - 8.10.4 import or export regulations or embargoes
    - 8.10.5 strikes, lockouts or other industrial actions or trade disputes (whether involving employees of the Seller or a third party)
    - 8.10.6 difficulties in obtaining raw materials, labour, fuel, parts or machinery
    - 8.10.7 power failure or breakdown in machinery
9. **Insolvency of Buyer**
  - 9.1 This Clause applies if:
    - 9.1.1 the Buyer makes any voluntary arrangement with its Creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purpose of amalgamation or reconstruction); or
    - 9.1.2 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer; or
    - 9.1.3 the Buyer ceases, or threatens to cease, to carry on business; or
    - 9.1.4 the Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly
  - 9.2 If this clause applies then, without prejudice to any other right of remedy available to the Seller, the Seller shall be entitled to cancel the Contract or suspend any further deliveries (or refuse to perform any further deliveries) under the Contract without any liability to the Buyer, and if the Goods have been delivered and/or the Services performed but in either case not paid for, the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary
10. **General**
  - 10.1 Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving notice.
  - 10.2 If any provision of this Contract is or may be void or unenforceable the remainder of the Contract shall not be affected
  - 10.3 The Contract shall be governed by the Laws of England and Wales