

Franklin Windows Ltd Jan 2012

Conservatories Terms of Sale

1. DEFINITIONS:

- 1.1 Buyer: means the customer whose name appears on the Order Form.
- 1.2 Conditions: means the terms and conditions of sale set out hereunder and on the Order Form and any other terms and conditions agreed in writing by the Seller.
- 1.3 Delivery Date: means the date specified by the Seller when the goods are to be delivered and installation commenced.
- 1.4 Goods: means the articles and installation which the Buyer agrees to buy from the Seller and which are specified in the Order Form.
- 1.5 Price: means the price for the Goods excluding V.A.T.
- 1.6 Seller: means Franklin Windows Ltd, Carlton Works, Cemetery Road, Yeadon, Leeds LS19 7BD.
- 1.7 Premises: means the installation address.
- 1.8 First Stage: means upon completion of the conservatory base.
- 1.9 Second Stage: means upon erection of frames and roof.

2. PARTIES:

- 2.1 This agreement is made between Franklin Windows Ltd Limited and the Buyer whose name and address appears on this agreement and shall not be assigned without the written agreement of Franklin Windows Ltd.

3. CONDITIONS OF SALE:

- 3.1 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 which the Buyer may purport to apply under any purchase under confirmation of order or similar document.
- 3.2 All orders for Goods shall be deemed to be an offer by the Buyer to purchase Goods pursuant to these Conditions.
- 3.3 Any variation to these Conditions (including any special terms and conditions between the parties) shall be inapplicable unless agreed in writing by the Seller.

4. ILLUSTRATIONS:

- 4.1 All illustrations in the Seller's promotional literature are for the Buyer's guidance and information only. The Seller from time to time may 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. Demonstration windows, doors and other products are used to demonstrate the working of a typical product and its composition and are sample products only.

5. VARIATIONS:

- 5.1 The Seller will not accept any variations or alteration to the order placed by the Buyer unless confirmed in writing by the Buyer. Acceptance of any such variation or alteration is at the sole discretion of the Seller and may result in extra charges being made. The Buyer is advised that goods ordered under this contract are purpose-made specifically for the buyer's particular requirements and as such are not re-saleable to third parties.

6. REINFORCEMENT:

- 6.1 A copy of Franklin Windows Ltd standard reinforcement parameters is available on request. When fully reinforced is specified short lengths of profile may not be reinforced due to manufacturing limitations.

7. SURVEY:

- 7.1 Prices given by the Seller to the Buyer are conditional upon the Seller's survey and price verification.
- 7.2 The Seller will advise the Buyer of the survey date in respect of which the Buyer will allow the surveyor access to the property.
- 7.3 This agreement is conditional upon the Seller's Surveyor's approval of the schedule of work following inspection.
- 7.4 The Seller reserves the right to make such modifications to the schedule of work as their surveyor deems necessary.
- 7.5 If the Surveyor's approval is not given for whatever reason or the Buyer does not accept the proposed modification, any deposit will be refunded without interest and the agreement will be at an end. The Buyer shall obtain all necessary consent from owners or occupiers (as the case may be) of adjoining premises and access to such premises if required by the Seller's personnel.

8. DELIVERY:

- 8.1 Upon receipt of notice that the Goods are ready for installation by the Seller, the Buyer shall by arrangement afford access to the premises. Non-acceptance of installation will render the Buyer liable for further charges.
- 8.2 If the work is not substantially completed within the estimated installation period stated in this agreement, the Buyer may serve written notice on the Seller requiring the Seller to complete the work within such reasonable period as the Buyer may specify (a reasonable period would be regarded as six weeks). If the work is not completed within such estimated period, the Buyer may cancel the uncompleted work covered by this agreement without penalty to himself by service of a written notice to that effect to the Seller.
- 8.3 Notwithstanding this the Seller shall not be liable for any delay in the completion of the work which arises from causes beyond its reasonable control and in the event that time had been made the essence of the contract, time shall not run during any period when delay on that account is operating.
- 8.4 If the installation is not required by the Buyer within 26 weeks from the date of this contract, then the Seller shall be at liberty to charge the Buyer the price for the products ruling at the expiration of the said 26 weeks period in substitution for the price shown in this contract.

9. PAYMENT:

- 9.1 The Seller has quoted its price to the Buyer on the understanding that the Buyer will pay the outstanding balance in full when the job is substantially completed. All payments including stage payments are due as per contract no later than 7 days from request. Any invoice outstanding beyond this period will be referred to Daniels Silverman Limited and will be subject to a 15% surcharge together with all other charges and legal fees incurred will be the responsibility of the customer and will be legally enforceable.
- 9.2 Any sum outstanding following substantial completion will be subject to interest at a rate of 4% above Barclays Bank PLC's base rate from time to time in force and shall accrue from substantial completion of job to the full amount being paid.
- 9.3 The Seller's personnel are authorised to accept cash, Banker's draft, a cheque or Home improvement Loan documents in favour of Franklin Windows Ltd only. If there is some minor defect in the work the Seller expects the Buyer to rely on its assurance that it will be rectified in accordance with the terms of its guarantee. The Buyer's failure to pay the balance at substantial completion would be a breach of this agreement.
- 9.4 V.A.T. will be payable by the Buyer at the appropriate rate.
- 9.5 The next stage in production shall not commence until payment for the completed stage has been received in full.

10. GUARANTEE:

- 10.1 The Seller undertakes to repair or replace defective materials should any fault appear in any window or door installed by the Seller within ten years from the date of installation and if payment has been received in full. Any repair work carried out or replacement units supplied within the guarantee period will also be covered, but only for the portion still remaining of the guarantee period.
This guarantee does not extend to:
 - 10.2 Minor imperfections in the glass arising from the glass manufacturing process. All newly installed leaded glass products are subject to a natural oxidation process. Details of this process can be obtained from the Seller.
- (i) Franklin Windows Ltd will cover fitting and replacement costs of broken-down sealed units up to 5 years after installation. After 5 years a fitting cost will be levied. Replacement unit cost is dependent on supplier guarantee and terms.

Glass Units

1. This warranty applies to all sealed units supplied by Franklin Windows Ltd, subject to the conditions stated herein.
2. If within five years from the invoice date, through faulty manufacture, the unbroken sealed unit becomes visually obscured by condensation or dust collection within the unit we will: Supply a replacement sealed unit and, at our option, either install the new sealed unit, or accept the costs of

removing the faulty sealed unit and installing the new one, provided those charges do not exceed those which we would have incurred for the same job.

3. If within the second five years from invoice date, and subject to the aforementioned, Franklin Windows Ltd will: Supply a free of charge replacement sealed unit only.

4. This warranty does not cover consequential damage or loss of whatever nature and howsoever arising whether from failure of the existing sealed unit, or from the de-glazing and the re-glazing of a replacement sealed unit, or otherwise.

5. The acceptance by us of any claim under this warranty is conditional upon our representative being given a reasonable opportunity to inspect the unbroken sealed unit before it is de-glazed. If upon inspection by a Franklin Windows Ltd representative, it is found that the sealed unit was not of faulty manufacture, we will submit a charge for the cost of the inspection. If the claimant challenges the result of our inspection, a mutually acceptable independent inspector may be appointed, and subsequently all charges relating to both inspections will be paid:

a) By Franklin Windows Ltd if the decision is in favour of the claimant. b) By the claimant if the decision is in favour of Franklin Windows Ltd.

6. All replacement sealed units supplied will be on a "like for like" basis using standard components available at the time of construction. Should it be necessary to source the replacement sealed unit from another supplier, this warranty would not apply for that product.

7. This warranty applies only to sealed units installed within the United Kingdom.

8. The following are not covered by this warranty: a) Sealed units, which have been glazed incorrectly where the original contract was for, supply only. For these purposes, a sealed unit will be deemed to have been incorrectly glazed if the method and manner of installation does not comply with the BS 6262 Code of Practice, Glazing for buildings, or BS8000 workmanship on building sites Part 7 code of practice for glazing and their amendments, current at the date of installation. b) Sealed units used in special applications such as (but without limitation): transport vehicles, ships or temperature cabinets, or those used at altitudes over 800 metres, or where they have been transported over such elevation, unless the warranty has been specifically amended in writing to cover the relevant special application. c) Sealed units, which have not been maintained completely in accordance with our recommendations (a copy of which is available upon request) and/or any recommendations/methods of the glazing system manufacturer.

d) Sealed units showing the optical phenomenon occasionally seen as interference colour bands, known as "Brewster"s Fringes".

9. A claim is only valid when it is made in writing, in normal circumstances to the issuing location, or alternatively to the Head office of Franklin Windows Ltd.

10. This warranty extends to all sealed units made by Franklin Windows Ltd, whether or not they bear the British standards kitemark. This Kitemark is not available for, or applicable to, all types of sealed unit. This warranty does not form part of any contract of sale, but is not intended to affect, or otherwise replace, rights or obligations conferred by any contract of sale, or by Common Law.

11. Applicable Law: Any claim under this warranty will be governed by the laws of England and shall be referred to a court having jurisdiction in England.

COMPLIANCE WITH OUR MAINTENANCE RECOMMENDATIONS IS ESSENTIAL, FAILURE TO COMPLY WITH THEM WILL INVALIDATE THIS WARRANTY.

10.3 All locking mechanisms, handles and hinges contain moving parts and require occasional lubrication to keep them in good working order.

These components and other hardware are covered by a one year guarantee. Solid brass furniture is protected by a lacquered coating. However due to the environment where the handle is fitted and used, the lacquer can become damaged by rings and keys resulting in moisture attacking the brass surface. The result of this is discoloration which cannot be prevented.

10.4 Fans, mechanical ventilators, PVC-U trims, powder coatings, glass units and moving parts are covered by warranties which have been given to the Seller by their Suppliers.

10.5 Damage due to accident, storm, flood, neglect, misuse or premature deterioration which results from the Buyer"s failure to comply with the Seller"s Authorised Personnel.

10.6 The removal and/or repositioning of the installation or part of the installation if it has been carried out by persons other than the Seller"s maintenance instructions.

10.7 Existing timber adjacent to the installation of the Seller"s products.

10.8 Woodgrain foiled products which are guaranteed for 5 years from date of installation. Notification under this guarantee must be by written notice of the defect, given within 28 days of the date upon which the discovery of the defect might reasonably be made. Defects attributable to poor workmanship or faulty materials supplied by the Seller must be notified in writing by the Buyer to the Seller within 14 days of completion of the work.

10.9 Damage resulting from subsidence due to soil shrinkage, underground mine workings or other means.

10.10 Patios, paving, paths, retaining or decorative walls, steps and balustrades installed by the Seller which are covered under the terms of the Seller"s guarantee for a period of one year only.

10.11 Minor defects to plaster work.

10.12 Damage to the Goods attributable to the failure of foundations or structure where these have not been constructed by the Seller.

10.13 Discolouration or frost damage to brickwork.

10.14 Timber discolouration, grain effects or colour.

10.15 Should the property be sold or change ownership, any remaining guarantee cannot be transferred to the new owner without prior written consent and will be subject to a fee.

11. CONDENSATION AND DAMP:

11.1 The fitting of double-glazed units will not in itself eliminate condensation. The Seller"s double-glazed units are designed primarily to reduce heat loss. The presence of condensation is solely dependent upon the environment within the dwelling, and this may reveal marks from the manufacturing process. This is unavoidable and is not a manufacturing fault.

11.2 The Seller gives no warranty concerning the incidence, prevention or elimination of condensation following the installation of its products.

11.3 The Buyer will have been advised by the Seller about the advantage of cavity trays. By ticking the „NO" box in the relevant section overleaf, the Seller can take no responsibility for water entering the cavity and any subsequent staining or damage caused.

12. SUPPLEMENTARY WORK:

12.1 The Seller does not undertake to move services, fixtures or fittings which are ancillary to the basic structure of the property, e.g. radiators, pipes, electricity, telephone, alarm system or television cables unless agreed in writing.

12.2 The Seller will endeavor to ensure that the works match existing finishes but will not be liable for non-matching due to weathering of existing materials and matching of external specialist finishes such as pebble-dashing, Tyrolean or similar material. When variations occur in existing plaster lines, the Seller cannot guarantee that equal amounts of subframe will be visible all round.

12.3 The Seller will make good any damage caused in the course of installation to plaster, floor, rendering, brickwork or pointing immediately surrounding any window or door installed but the Seller cannot guarantee to avoid causing superficial damage to surrounding wallpaper and paintwork or to avoid damage to ceramic tiles in the same area. The making good of damage is the Buyer"s responsibility.

12.4 The Seller cannot undertake to remove intact any existing glass, frames or secondary double glazing units or guarantee to remove or replace existing secondary double glazing units without causing damage.

12.5 All materials removed during the course of installation will be cleared from site and cannot be retrieved thereafter. If any materials are required to be retained (but see clause 12.4 above) this must be clearly stated in the contract.

12.6 The Buyer shall be responsible for ensuring that the supply and fittings of the products complies with every applicable statute in Council regulations or directions of Government local or other authority and in particular that the Buyer has fully obtained necessary license permit or authority required in connection herewith. However, the Seller will use its best endeavors to obtain planning permission and building regulation approval relating to the erection of the Goods. Should these approvals not be forthcoming, the Seller will refund such monies as appropriate and consider the contract cancelled.

12.7 The Seller accepts no responsibility for making good any damage or defects already in existence prior to the installation or for any damage resulting from structural or other defects in the property at which the installation is carried out.

12.8 The Buyer will make available free use of water and electricity.

12.9 If internal doors from the main property are removed or requested doors are not exterior quality then building control permission will be needed. By ticking the physical barrier box overleaf you are relieving the Seller of any recourse.

12.10 If a building inspector is needed and requests work that is not a part of the contract, the additional work will be invoiced extra.

12.11 Extras (other than those written on the contract) to plumbing and electrical will be invoiced as per the price list.

13. CANCELLATION:

13.1 This agreement may be cancelled by either party without penalty by written notice of Cancellation (to be sent Recorded Delivery) given by the end of the seventh day following the signing of the contract.

13.2 After expiration of seven days from the date upon which the Buyer signs this contract non-compliance with or cancellation of this contract by the Buyer shall amount to a breach of contract by the Buyer and the Buyer shall thereupon be liable to pay the Seller, by way of deduction from deposit or otherwise, the losses and expenses incurred by the Seller. The Buyer should be aware that those losses and expenses may include the cost of the units manufactured by the Seller in pursuance of this contract as those units are manufactured to exact dimensions and will not fit any other installation and so have no appreciable value elsewhere.

13.3 The Seller reserves the right to cancel this contract any time by giving notice to the Buyer and the liability of the Seller in the event of such cancellation is limited to a refund of any payments made by the Buyer in connection with this contract.

14. COMPLAINTS Ombudsman Scheme - Handling of disputes

14.1 All disputes, differences and questions which at any time arise between the parties to this agreement and guarantee or their representatives or assigns attaching to or arising out of or in respect of this agreement and guarantee or its subject matter shall be, and are hereby, submitted via The Double Glazing and Conservatory Quality Assurance Ombudsman Scheme (DGCOS) (unless there is good reason to send the matter directly to the Ombudsman) for conciliation, mediation or determination/arbitration by the Ombudsman or his nominee.

14.2 Where a matter referred for conciliation or mediation has not been resolved within one month or such later time as the parties may agree in writing either of the parties shall have the right to request that the matter(s) in dispute be resolved by arbitration and/or determined by the Ombudsman pursuant to the rules of The Quality Assurance Ombudsman Scheme, 1996, or any subsequent modification thereof.

14.3 Where the complainant party is a consumer as defined in the Unfair Terms in Consumer Contracts Regulations, 1999 and in the Arbitration Act, 1996, or any re-enactment or statutory modification of either, this clause shall only apply where the complainant, in writing, requests a resolution by conciliation, mediation or determination/arbitration after the arising of the dispute, difference or complaint or question.

14.4 In the event of any dispute arising during the course of or subsequent to completion of the contract the customer will not be entitled to withhold payment in excess of an amount representing the reasonable cost of the work required to rectify or replace any allegedly defective Works which are the subject of the dispute.