

NK Windows – Terms & Conditions of Trade

1. Definitions

- 1.1 “Company” means NK Window Solutions Limited T/A NK Windows its successors and assigns or any person acting on behalf of and with the authority of NK Window Solutions Limited T/A NK Windows.
- 1.2 “Client” means the person/s buying the Goods as specified in any invoice, document or order, and if there is more than one Client is a reference to each Client jointly and severally.
- 1.3 “Goods” means all Goods or Services supplied by the Company to the Client at the Client’s request from time to time (where the context so permits the terms ‘Goods’ or ‘Services’ shall be interchangeable for the other).
- 1.4 “Price” means the Price payable for the Goods as agreed between the Company and the Client in accordance with clause 5 below.

2. Acceptance

- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of the Goods.
- 2.2 These terms and conditions may only be amended with the Company’s consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and the Company.
- 2.3 Whilst every care is taken by the Company to carry out any verbal instructions of the Client, it is the Client’s responsibility to verify the accuracy of the measurements and quantities, before the Client or Company places an order based on these measurements and quantities. The Company shall accept no liability whatsoever for any errors not picked up and/or corrected by the Client before the order is placed for the Goods.

3. Change in Control

- 3.1 The Client shall give the Company not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client’s details (including but not limited to, changes in the Client’s name, address, contact phone or fax number/s, or business practice). The Client shall be liable for any loss incurred by the Company as a result of the Client’s failure to comply with this clause.

4. Authorised Representatives

- 4.1 Unless otherwise limited as per clause 4.2 the Client agrees that should the Client introduce any third party to the Company as the Client’s duly authorised representative, that once introduced that person shall have the full authority of the Client to order any Goods or Services on the Client’s behalf and/or to request any variation to the Services on the Client’s behalf (such authority to continue until all requested works have been completed or the Client otherwise notifies the Company in writing that said person is no longer the Client’s duly authorised representative).
- 4.2 In the event that the Client’s duly authorised representative as per clause 4.1 is to have only limited authority to act on the Client’s behalf then the Client must specifically and clearly advise the Company in writing of the parameters of the limited authority granted to their representative.
- 4.3 The Client specifically acknowledges and accepts that they will be solely liable to the Company for all additional costs incurred by the Company (including the Company’s profit margin) in providing any works, materials, Services or variation/s requested by the Client’s duly authorised representative (subject always to the limitations imposed under clause 4.2 (if any)).

5. Price and Payment

- 5.1 At the Company’s sole discretion the Price shall be either:
 - (a) as indicated on any invoice provided by the Company to the Client; or
 - (b) the Company’s quoted price (subject to clause 5.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 5.2 The Company reserves the right to change the Price:
 - (a) if a variation to the Goods which are to be supplied is requested; or
 - (b) if a variation to the Services originally scheduled (including any applicable plans or specifications) is requested; or
 - (c) where additional Services are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, poor weather conditions, limitations to accessing the site, safety considerations, prerequisite work by any third party not being completed, inaccurate structural measurements provided by the Client, iron reinforcing rods in concrete, or hidden pipes and wiring in walls etc) which are only discovered on commencement of the Services; or
 - (d) in the event of increases to the Company in the cost of labour or Goods which are beyond the Company’s control.
- 5.3 At the Company’s sole discretion a non-refundable deposit may be required in accordance with the Company’s payment schedule, as detailed below:

	Stock Deposit	Production Deposit	Progress Payment	Final Balance
Special foil orders	15% at time of order	15% at final measure	At the company’s discretion, if job delayed by client	Seven (7) days after completion of the Services & before pick up or delivery of ex works Goods.
In stock orders		30% at final measure		

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- 5.4 Time for payment for the Goods being of the essence, the Price will be payable by the Client on the date/s determined by the Company, which may be:
- (a) on delivery of the Goods;
 - (b) before delivery of the Goods;
 - (c) by way of instalments/progress payments in accordance with the Company's payment schedule;
 - (d) the date specified on any invoice or other form as being the date for payment; or
 - (e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by the Company.
- 5.5 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, or by any other method as agreed to between the Client and the Company.
- 5.6 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to the Company an amount equal to any GST the Company must pay for any supply by the Company under this or any other agreement for the sale of the Goods. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

6. Delivery of Goods

- 6.1 Delivery ("**Delivery**") of the Goods is taken to occur at the time that:
- (a) the Client or the Client's nominated carrier takes possession of the Goods at the Company's address; or
 - (b) the Company (or the Company's nominated carrier) delivers the Goods to the Client's nominated address even if the Client is not present at the address.
- 6.2 At the Company's sole discretion the cost of delivery is either included in the Price or is in addition to the Price.
- 6.3 The Client must take delivery by receipt or collection of the Goods whenever they are tendered for delivery. In the event that the Client is unable to take delivery of the Goods as arranged then the Company shall be entitled to charge a reasonable fee for redelivery and/or storage.
- 6.4 The Company may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 6.5 Any time or date given by the Company to the Client is an estimate only. The Client must still accept delivery of the Goods even if late and the Company will not be liable for any loss or damage incurred by the Client as a result of the delivery being late.

7. Risk

- 7.1 Risk of damage to or loss of the Goods passes to the Client on Delivery and the Client must insure the Goods on or before Delivery.
- 7.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, the Company is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Company is sufficient evidence of the Company's rights to receive the insurance proceeds without the need for any person dealing with the Company to make further enquiries.
- 7.3 If the Client requests the Company to leave Goods outside the Company's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Client's sole risk.
- 7.4 In the event the Company has provided Goods to the Client on a 'supply-only' basis, the Company shall not be liable for the installation of the Goods. It is the Client's sole responsibility to follow the manufacturer's installation recommendations.
- 7.5 Where the Company is required to install the Goods the Client warrants that the structure of the premises or equipment in or upon which these Goods are to be installed or erected is sound and will sustain the installation and work incidental thereto and the Company shall not be liable for any claims, demands, losses, damages, costs and expenses howsoever caused or arising should the premises or equipment be unable to accommodate the installation.

8. Access

- 8.1 The Client shall ensure that the Company has clear and free access to the work site at all times to enable them to undertake the Services. The Company shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of the Company.

9. Compliance with Laws

- 9.1 The Client and the Company shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Services.
- 9.2 The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the Services.
- 9.3 The Client agrees that the site will comply with any occupational health and safety laws relating to building/construction sites and any other relevant safety standards or legislation.

10. Dimensions, Plans and Specifications

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- 10.1 All customary building industry tolerances shall apply to the dimensions and measurements of the Goods unless the Company and the Client agree otherwise in writing.
- 10.2 The Company shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Client.
- 10.3 If the giving of an estimate or quotation for the supply of Goods involves the Company estimating measurements and quantities, it shall be the responsibility of the Client to verify the accuracy of the Company's estimated measurements and quantities, before the Client places an order based on such estimate or accepts such quotation.
- 10.4 Should the Client require any changes to the Company's estimated measurements and quantities, the Client shall request such changes in writing, in the case of an estimate before placing an order based on that estimate and in the case of a quotation before acceptance of that quotation.

11. Clients Responsibilities

- 11.1 It is the Clients responsibility to;
 - (a) make the premises available on the agreed date and time. If installation is interrupted by the failure of the Client to adhere to the installation schedule agreed to between the Company and the Client, any additional costs will be invoiced to the Client as an extra.
 - (b) have all areas clean and clear to enable scheduled Services to be completed in accordance with the schedule of installation; and
 - (c) the Company takes no responsibilities for damage caused to Goods by other than the Company employees; and
 - (d) must supply power to within 8 metres of the project; and
 - (e) fully disclose any information that may affect the installation procedures of the Company; and
 - (f) it is the intention of the Company and agreed by the Client that it is the responsibility of the Client to provide and have erected scaffolding or similar, to enable the Services to be undertaken (where in the Company's opinion it is deemed necessary). It is also agreed that all scaffolding erected will comply with industry safety standards and that any person erecting the scaffolding shall be suitably qualified to ensure its safe and proper erection and where necessary shall hold a current certificate of competency and/or be fully licensed.

12. Insurance

- 12.1 Prior to commencement of the Services under this contract the Company agrees to have the following insurances in place (and where requested by the Client shall provide the Client with evidence that the insurances are current):
 - (a) Public Liability Insurance (to cover liabilities to third parties for death or personal injury or damage to property for an amount of not less than \$5 million); and
 - (b) when requested upon acceptance of the quotation, adequate insurance pertaining to Property Damage Insurance for the Services under this contract for replacement or full reinstatement (including Services in progress and Materials).

13. Title

- 13.1 The Company and the Client agree that ownership of the Goods shall not pass until:
 - (a) the Client has paid the Company all amounts owing to the Company; and
 - (b) the Client has met all of its other obligations to the Company.
- 13.2 Receipt by the Company of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.
- 13.3 It is further agreed that:
 - (a) until ownership of the Goods passes to the Client in accordance with clause 13.1 that the Client is only a bailee of the Goods and must return the Goods to the Company on request.
 - (b) the Client holds the benefit of the Client's insurance of the Goods on trust for the Company and must pay to the Company the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
 - (c) the Client must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of any such act on trust for the Company and must pay or deliver the proceeds to the Company on demand.
 - (d) the Client should not convert or process the Goods or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of the Company and must sell, dispose of or return the resulting product to the Company as it so directs.
 - (e) the Client irrevocably authorises the Company to enter any premises where the Company believes the Goods are kept and recover possession of the Goods.
 - (f) the Company may recover possession of any Goods in transit whether or not delivery has occurred.
 - (g) the Client shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of the Company.
 - (h) the Company may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.

14. Personal Property Securities Act 1999 ("PPSA")

- 14.1 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that:
 - (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and

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- (b) a security interest is taken in all Goods previously supplied by the Company to the Client (if any) and all Goods that will be supplied in the future by the Company to the Client.
- 14.2 The Client undertakes to:
- (a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Company may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
 - (b) indemnify, and upon demand reimburse, the Company for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Goods charged thereby;
 - (c) not register a financing change statement or a change demand without the prior written consent of the Company; and
 - (d) immediately advise the Company of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
- 14.3 The Company and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 14.4 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 14.5 Unless otherwise agreed to in writing by the Company, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 14.6 The Client shall unconditionally ratify any actions taken by the Company under clauses 14.1 to 14.5.

15. Security and Charge

- 15.1 In consideration of the Company agreeing to supply the Goods, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 15.2 The Client indemnifies the Company from and against all the Company's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Company's rights under this clause.
- 15.3 The Client irrevocably appoints the Company and each director of the Company as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 15 including, but not limited to, signing any document on the Client's behalf.

16. Client's Disclaimer

- 16.1 The Client hereby disclaims any right to rescind, or cancel any contract with the Company or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Client by the Company and the Client acknowledges that the Goods are bought relying solely upon the Client's skill and judgment.

17. Defects

- 17.1 The Client shall inspect the Goods on delivery and shall within seven (7) days of delivery (time being of the essence) notify the Company of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford the Company an opportunity to inspect the Goods within a reasonable time following delivery if the Client believes the Goods are defective in any way. If the Client shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which the Company has agreed in writing that the Client is entitled to reject, the Company's liability is limited to either (at the Company's discretion) replacing the Goods or repairing the Goods.

18. Returns

- 18.1 Returns will only be accepted provided that:
- (a) the Client has complied with the provisions of clause 17.1; and
 - (b) the Company has agreed in writing to accept the return of the Goods; and
 - (c) the Goods are returned at the Client's cost within ten (10) days of the delivery date; and
 - (d) the Company will not be liable for Goods which have not been stored or used in a proper manner; and
 - (e) the Goods are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.
- 18.2 Non-stocklist items or Goods made to the Client's specifications are under no circumstances acceptable for credit or return.

19. Warranty

- 19.1 Subject to the conditions of warranty set out in clause 19.2 the Company warrants that if any defect in any workmanship of the Company becomes apparent and is reported to the Company within twelve (12) months of the date of delivery (time being of the essence) then the Company will either (at the Company's sole discretion) replace or remedy the workmanship.
- 19.2 The conditions applicable to the warranty given by clause 19.1 are:
- (a) the warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
 - (i) failure on the part of the Client to properly maintain any Goods; or
 - (ii) failure on the part of the Client to follow any instructions or guidelines provided by the Company; or

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- (iii) any use of any Goods otherwise than for any application specified on a quote or order form; or
- (iv) the continued use of any Goods after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
- (v) fair wear and tear, any accident or act of God.

(b) the warranty shall cease and the Company shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without the Company's consent.

(c) in respect of all claims the Company shall not be liable to compensate the Client for any delay in either replacing or remedying the workmanship or in properly assessing the Client's claim.

19.3 For Goods not manufactured by the Company, the warranty shall be the current warranty provided by the manufacturer of the Goods. The Company shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods.

20. Consumer Guarantees Act 1993

20.1 If the Client is acquiring Goods for the purposes of a trade or business, the Client acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Goods by the Company to the Client.

21. Intellectual Property

21.1 Where the Company has designed, drawn or developed Goods for the Client, then the copyright in any designs and drawings and documents shall remain the property of the Company.

21.2 The Client warrants that all designs, specifications or instructions given to the Company will not cause the Company to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify the Company against any action taken by a third party against the Company in respect of any such infringement.

21.3 The Client agrees that the Company may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which the Company has created for the Client.

22. Default and Consequences of Default

22.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at the Company's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.

22.2 Without prejudice to any other remedies the Company may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions the Company may suspend or terminate the supply of Goods to the Client. The Company will not be liable to the Client for any loss or damage the Client suffers because the Company has exercised its rights under this clause.

22.3 Without prejudice to the Company's other remedies at law the Company shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to the Company shall, whether or not due for payment, become immediately payable if:

- (a) any money payable to the Company becomes overdue, or in the Company's opinion the Client will be unable to make a payment when it falls due;
- (b) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
- (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

23. Liquidated Damages

23.1 If the Client owes the Company any money the Client shall indemnify the Company from and against all costs and disbursements incurred by the Company in recovering the debt (including, but not limited to, internal administration fees, legal costs on a solicitor and own client basis, the Company's contract default fee, bank dishonour fees, and liquidated damages equivalent to the Company's standard hourly rates for all time that the Company or the Company's employees are required to spend in actively pursuing the debt (for the sake of clarity the liquidated damages shall be calculated based on an individual's standard hourly rate as was applicable at the date that the debt became overdue).

24. Cancellation

24.1 The Company may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Client. On giving such notice the Company shall repay to the Client any money paid by the Client for the Goods. The Company shall not be liable for any loss or damage whatsoever arising from such cancellation.

24.2 In the event that the Client cancels delivery of Goods the Client shall be liable for any and all loss incurred (whether direct or indirect) by the Company as a direct result of the cancellation (including, but not limited to, any loss of profits).

24.3 Cancellation of orders for Goods made to the Client's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

25. Privacy Act 1993

25.1 The Client authorises the Company or the Company's agent to:

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- (a) access, collect, retain and use any information about the Client;
 - (i) (including any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Client's creditworthiness; or
 - (ii) for the purpose of marketing products and services to the Client.
 - (b) disclose information about the Client, whether collected by the Company from the Client directly or obtained by the Company from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Client.
- 25.2 Where the Client is an individual the authorities under clause 25.1 are authorities or consents for the purposes of the Privacy Act 1993.
- 25.3 The Client shall have the right to request the Company for a copy of the information about the Client retained by the Company and the right to request the Company to correct any incorrect information about the Client held by the Company.

26. Construction Contract Act 2002

- 26.1 The Client hereby expressly acknowledges that:
- (a) the Company has the right to suspend work within five (5) working days of written notice of its intent to do so if a payment claim is served on the Client, and:
 - (i) the payment is not paid in full by the due date for payment and no payment schedule has been given by the Client; or
 - (ii) a scheduled amount stated in a payment schedule issued by the Client in relation to the payment claim is not paid in full by the due date for its payment; or
 - (iii) the Client has not complied with an adjudicator's notice that the Client must pay an amount to the Company by a particular date; and
 - (iv) the Company has given written notice to the Client of its intention to suspend the carrying out of construction work under the construction contract.
 - (b) if the Company suspends work, it:
 - (i) is not in breach of contract; and
 - (ii) is not liable for any loss or damage whatsoever suffered, or alleged to be suffered, by the Client or by any person claiming through the Client; and
 - (iii) is entitled to an extension of time to complete the contract; and
 - (iv) keeps its rights under the contract including the right to terminate the contract; and may at any time lift the suspension, even if the amount has not been paid or an adjudicator's determination has not been complied with.
 - (c) if the Company exercises the right to suspend work, the exercise of that right does not:
 - (i) affect any rights that would otherwise have been available to the Company under the Contractual Remedies Act 1979; or
 - (ii) enable the Client to exercise any rights that may otherwise have been available to the Client under that Act as a direct consequence of the Company suspending work under this provision.

27. General

- 27.1 The failure by the Company to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Company's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 27.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the courts of New Zealand.
- 27.3 The Company shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by the Company of these terms and conditions (alternatively the Company's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 27.4 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by the Company nor to withhold payment of any invoice because part of that invoice is in dispute.
- 27.5 The Company may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 27.6 The Client agrees that the Company may amend these terms and conditions at any time. If the Company makes a change to these terms and conditions, then that change will take effect from the date on which the Company notifies the Client of such change. The Client will be taken to have accepted such changes if the Client makes a further request for the Company to provide Goods to the Client.
- 27.7 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 27.8 The Client warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.