

Terms and conditions of sale

1. General

- 1.1 In these terms and conditions:
The "Company" means Nebulite™;
The "Customer" means the company or other entity named on the invoice, sale and purchase agreement and warranty documents as the "Customer"; "Goods" means "window and door joinery" supplied by the Company to the Customer and in respect of each order of Goods from the Customer accepted by the Company means the Goods described in or of which a description is cross-referenced in the invoice issued by the Company in respect of the relevant order; "GST" means Goods and Services Tax.
- 1.2 Any Goods supplied by the Company to the Customer will be supplied on these terms and conditions only (unless otherwise expressly agreed in writing by the Company). These terms and conditions take precedence over any terms offered by the Customer.

2. Quotation

- 2.1 Quotations are based on details supplied by the Customer. Any variation will be at the Customer's expense. The Customer shall ensure that the sizes and number of items quoted correspond with the Customer's requirements.
- 2.2 Quotations do not include provision of scaffolding, craneage or other ancillary equipment that may be necessary for the installation of Goods.
- 2.3 All aluminum is quoted as supplied without a protective coating, unless otherwise expressly included in the quotation, the protective coating referred to will be for powder coating to BS6496.
- 2.4 Unless specifically included in the quotation, the Customer is responsible for fixing and installing the Goods, and supplying and applying any necessary sealer, flashings, timber, fillets, fixing screws or fastenings.
- 2.5 Clerical errors or omissions whether in computation or otherwise in any quotation, order acknowledgement or invoice shall be subject to correction.
- 2.6 Once an order for Goods has been placed with the Company, the Customer may not cancel the order without the prior written consent of the Company which may be given subject to various terms, for example, the Company may charge the Customer for any expenses or additional costs as a result of any such cancellation.

3. Price

- 3.1 Quotations are based on costs current at the date of quotation. Prices quoted shall be valid for thirty (30) days from the date of communication. At the expiration of this thirty (30) day period, the Company may vary the quotation without notice.
- 3.2 Where no quotation is given the price of the Goods will be the price current at the date of dispatch.
- 3.3 The price quoted for the Goods excludes GST. GST will be paid by the Customer in addition to the price quoted.

4. Payment

- 4.1 Unless otherwise agreed, 50% for the price of the Goods, plus GST, is to be paid as a deposit on the date of confirmation of an order of Goods, with the balance of the purchase price payable in full on delivery.
- 4.2 If credit is given, the price of Goods, plus GST, is payable in full on the 20th of the month following the date the Goods are ready for collection by the Customer.
- 4.3 The Customer may not deduct or withhold any amount (whether by way of set-off, counterclaim or otherwise) from any money owing to the Company.
- 4.4 If full payment for any Goods is not made to the Company by the due date for payment, the Customer must pay, at the Company's discretion and without prejudice to any other remedy the Company may have, on demand, default interest at a rate equal to 5% above the current base lending rate from time to time set by the Company's bankers from the due date for payments until the date when payment is actually made and all expenses and costs (including legal costs as between solicitor and client) incurred by the Company in obtaining or attempting to obtain a remedy for the failure to pay (both before and after judgement).
- 4.5 The Company may at any time require the Customer to pay for Goods by bank cheque or post dated cheque or (in addition to the Company's security interest in the Goods) may require the Customer to procure such guarantees and securities as the Company considers necessary to secure to the Company payment for the Goods.

5. Delivery

- 5.1 All costs of delivery shall be paid by the Customer in addition to the price for the Goods.
- 5.2 Unless otherwise agreed in writing by the Company, the Customer is to arrange for the Goods to be picked up from the Company's premises:
(a) delivery will be considered to have been made when the Goods are available for collection by the Customer;
(b) the Customer or its authorised representative must sign the delivery docket before any Goods are loaded for delivery.
- 5.3 Delivery of Goods may be by installments.
- 5.4 Where the Company agrees in writing to arrange delivery of the Goods to the Customer's store or to a site designated by the Customer:
(a) delivery will be considered to have been made when the Goods arrive at the Customer's store or designated site;
(b) if the Customer fails or refuses to accept delivery at an agreed delivery time, delivery will be considered to have been effected in any event;
(c) the Customer or its authorised representative must sign the delivery docket before any Goods are unloaded;
(d) all claims for Goods damaged in transit must be made in writing and delivered to the Company within seven days of delivery of the Goods;
(e) the Customer is responsible for ensuring at its own cost, that all agreed delivery sites have unloading facilities together with labour and/or mechanical means to unload the Goods promptly, suitable access and area for unloading and suitable storage for the Goods.
(f) the Company's usual delivery times are between the hours of 8.00am and 5.00pm Monday to Friday, excluding statutory holidays. The Company may, at the Customer's request, arrange delivery at other times but will be entitled to charge the Customer for any additional costs the Company may incur.
- 5.5 The Company will endeavor to meet agreed delivery dates but will not be liable, nor may the Customer cancel any order, for late delivery. The delivery date specified on the quotation is an estimate only.
- 5.6 All claims for short or defective delivery must be made in writing and delivered to the Company within seven days of delivery of the Goods. The Customer may not cancel any order for short or defective delivery. If the Customer fails or refuses to uplift the Goods from the Company's premises or to take delivery of any Goods at an agreed delivery time, or if an agreed delivery site does not have the unloading facilities, access or storage required, the Company may charge the Customer (without limiting any other right the Company may have) for any expenses or additional costs incurred by the Company as a result.

6. Risk

The Customer bears the risk of any loss or damage to the Goods due to any cause whatsoever;

- (a) if the Company is to arrange delivery of the Goods, on delivery of the Goods;
(b) if the Goods are to be collected by the Customer from the Company's premises, when the Goods are available for collection by the Customer.

7. Ownership

- 7.1 Ownership of the Goods does not pass until:
(a) all amounts owing by the Customer to the Company in respect of the Goods have been paid;
(b) all other obligations of the Customer to the Company in respect of the Goods have been met.

The Customer agrees that this clause 7.1 creates a security interest in the Goods and the Customer hereby grants a security interest to the Company in each and every part of the Goods as security for payment for those Goods and any other amounts or obligations owing by the Customer to the Company at any time.

7.2 Until ownership of the Goods passes, the Customer:

- (a) must keep full and complete records of the Goods;
(b) must return the Goods in merchantable condition if requested to so by Company following non-payment of any amount owing by the Customer to the Company or non-fulfillment of any other obligation of the Customer to the Company, without limiting any other right the Company may have;
(c) gives the Company the right to inspect the Goods, or any part of them at all reasonable times;
(d) must not change its name, address or contact details without providing the Company with at least 30 days prior written notice;
(e) waives its rights to:
(i) receive a copy of any verification statement;
(ii) receive a copy of any financing change statement;
(f) if the Goods are for the Customer's business use, the Customer agrees, to the extent Part 9 of the Personal Property Securities Act 1999 ("PPSA") applies, that it will have no rights under Part 9 of the PPSA. For example, but without limitation, to:
(i) receive any notice that the Company intends to sell the Goods or take over the Goods on enforcement of the Company's security interest;
(ii) give a notice of objection of the Company taking over the Goods in satisfaction of any obligation owed by the Customer to the Company;
(iii) receive a statement of account on sale of the Goods;
(iv) recover any surplus on the sale of the Goods,
(g) must not give to the Company a written demand or allow any other person to give the Company a written demand or register or allow any other person to register a financing change statement under the PPSA.
- 7.3 The Customer acknowledges that it has received value as at the date for collection of the Goods and has not agreed to postpone the time for attachment of the security interest granted under these terms and conditions.

8. Warranty

- 8.1 All warranties, descriptions, representations or conditions whether implied by law, trade, custom or otherwise are, and all other liability of the Company, whether in tort (including negligence), contract or otherwise is, expressly excluded to the fullest extent permitted by law.
Specifically, where the Customer is acquiring the Goods for the purposes of a business, the parties acknowledge and agree that: (i) the parties are in trade; (ii) the Goods are both supplied and acquired in trade; (iii) the parties agree to contract out of sections 9 (misleading and deceptive conduct generally), 12A (unsubstantiated representations), 13 (false or misleading representations) and 14(1) (false representations and other misleading conduct in relation to land) of the Fair Trading Act 1986 (FTA); and (iv) all warranties, conditions and other terms implied by the Consumer Guarantees Act (CGA) or sections 9 (misleading and deceptive conduct generally), 12A (unsubstantiated representations), 13 (false or misleading representations) and 14(1) (false representations and other misleading conduct in relation to land) of the FTA are excluded from these terms and conditions to the fullest extent permitted by law. The Company hereby expressly contracts out of section 12 (guarantee as to repairs and spare parts) of the CGA and does not undertake in accordance with that section that repair facilities and spare parts will be available for the Goods
- 8.2 Insofar as the Company may be liable notwithstanding clause 8.1, to the extent permitted by law, the total liability of the Company whether in tort (including negligence), contract or otherwise for any loss, damage or injury arising directly or indirectly from any defect in or noncompliance of any Goods or any other breach of the Company's obligations is limited to the lesser of:
(a) The price of Goods complained of;
(b) The cost of repairing or replacing the defective Goods; or
(c) The actual loss or damage suffered by the Customer.
- 8.3 Except where statute expressly requires otherwise the Company is not liable in any event for any loss of profits, consequential, indirect or special damage, loss or injury of any kind suffered by the Customer or any other person.
- 8.4 While the Company will make every effort to ensure the accuracy of any advice, recommendation, information, assistance or service provided by the Company in relation to the Goods or their use or application, the Company does not accept any liability or responsibility in response to that advice, recommendation, information, assistance or service.
- 8.5 Where the Customer is acquiring the Goods for the purpose of re-supplying them in trade, the Customer will:
(a) Include a provision in its terms of sale to the effect that the CGA will not apply where a purchaser acquires or holds itself out as acquiring the Goods for the purposes of a business;
(b) Notify its purchasers of the effect of clause 8.5(a); and
(c) Indemnify the Company for and against any liabilities, losses, damages, claims, costs or expenses of whatever kind and nature incurred by the Company as a result of the Customer failing to take the action required under this clause 8.5.

9. Breach

- 9.1 If:
(a) Any amount payable by the Customer to the Company is overdue, or the Customer fails to meet any other obligation of the Company (whether in relation to the sale of Goods or otherwise) or in the Company's opinion the Customer is likely to be unable to meet its payment or other obligations to the Company; or
(b) The Customer becomes insolvent, has a receiver appointed in respect of all or some of its assets, makes or is likely to make an arrangement with its creditors or has a liquidator (provisional or otherwise) appointed or is placed under statutory or official management; or
(c) The ownership or effective control of the Customer is transferred or, in the Company's opinion, the nature of the Customer's business is materially altered; then:
(i) the Company may cancel any outstanding order with the Customer for all or any part of any contract or contracts with the Customer which remains unperformed, in addition to and without prejudice to its other remedies; and
(ii) All amounts outstanding under these terms and conditions or any other contract with the Company shall, whether or not due for payment, immediately become due and payable; and
(iii) The Company may reclaim any Goods in the Customer's possession or control and dispose of them for its own benefit and for that purpose the Company may, without notice enter directly or by its agents on any premises where it believes Goods may be stored, without in any way being liable to any person.

10. Miscellaneous

- 10.1 The Customer is responsible for disposing, at its own cost, of all materials used in the packaging or delivery of Goods supplied by the Company.
- 10.2 If at any time the Company does not enforce any of these terms and conditions or grants the Customer time or other indulgence, the Company shall not be construed as having waived that term or condition or its rights to later enforce that or any other term or condition.
- 10.3 The Customer is to execute documents and do such further acts as may be required by the Company to register the Company's security interest under the PPSA or for any purpose whatsoever.
- 10.4 These terms will be governed by New Zealand law and the Customer agrees to submit to the exclusive jurisdiction of the New Zealand courts.