



Units 14 - 18 . Moor Park Industrial Centre
Tolpits Lane . Watford
Hertfordshire . WD18 9EZ
T: 01923 225855
F: 01923 256106
E: sales@apluswindows.co.uk
W: www.apluswindows.co.uk

Terms of Sale

PARTIES

1. A Plus Windows and Doors Limited, a company incorporated and registered in England and Wales with company number 01983401 whose registered office is at Unit 27-28 Moor Park Industrial Centre, Tolpits Lane, Watford, Hertfordshire, WD18 9ND and which trades as A Plus Aluminium (**Supplier**)
2. The Customer named on the Order to which these Terms of Sale are attached and who placed the Order or agrees to buy the Goods from the Supplier on these Terms of Sale (**Customer**)

AGREED TERMS

1. INTERPRETATION

- 1.1. The definitions and rules of interpretation in this clause apply in these Terms of Sale.
 - 1.1.1. **Delivery:** completion of delivery of an Order in accordance with clause 5.
 - 1.1.2. **Force Majeure Event:** has the meaning given in clause 12.
 - 1.1.3. **Group:** in relation to a company, that company, its subsidiaries, its holding companies and their subsidiaries.
 - 1.1.4. **Order:** an order for Products submitted by the Customer in accordance with clause 3.
 - 1.1.5. **Order Number:** the reference number to be applied to an Order by the Supplier in accordance with clause 3.2.
 - 1.1.6. **Price:** the prices of the Products as set out in the Order or as otherwise agreed in writing between the Supplier and the Customer.
 - 1.1.7. **Products:** the products set out in the Order and, where the context requires, the Products ordered by and supplied to the Customer.
 - 1.1.8. **Specification:** the specification of the Products set out in the Order or as varied in writing between the Supplier and the Customer.
 - 1.1.9. **VAT:** value added tax chargeable under the Value Added Tax Act 1994 and any similar replacement or additional tax.

2. SUPPLY OF THE PRODUCTS

- 2.1. The Supplier shall supply and the Customer shall purchase the Products in accordance with these Terms of Sale.

3. ORDERS

- 3.1. No Order shall be deemed to be accepted by the Supplier until it issues an Order Number or (if earlier) the Supplier notifies the Customer that the Order is ready for Delivery.
- 3.2. The Supplier shall assign an Order Number to each Order it accepts and notify such Order Numbers to the Customer.

4. **MANUFACTURE, QUALITY AND PACKING**

- 4.1. The Supplier shall manufacture, pack and supply the Products in accordance with all generally accepted industry standards and practices that are applicable.
- 4.2. The Products supplied to the Customer by the Supplier under these Terms of Sale shall:
 - 4.2.1. conform to the Specification;
 - 4.2.2. be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and fit for any purpose held out by the Supplier;
 - 4.2.3. be free from material defects in design, material and workmanship and remain so for 12 months after Delivery; and
 - 4.2.4. comply with all applicable statutory and regulatory requirements.
- 4.3. Where the Specification has been supplied by the Customer, the Supplier shall have no liability where the Products conform to the Specification but do not meet the Customer's requirements.
- 4.4. Except as set out in these Terms of Sale, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from these Terms of Sale.
- 4.5. The Supplier shall ensure that the Products are properly packed and secured in such manner as to enable them to reach their destination in good condition.
- 4.6. Where the Products are constructed from natural materials, the Supplier will not be liable for any faults in the Product that occur after Delivery including but not limited to rot, warping, twisting, swelling and splitting.
- 4.7. Unless otherwise stated in the Order, standard ironmongery as recommended by systems suppliers and compatible with profiles will be provided. Any non-standard items requested and included in the Price may affect the Products and nullify any system or performance warranty on that Product.
- 4.8. The Products are generally not protected by tape, as tape protection does not prevent damage caused by impact and also is required to be removed within three months of the date of application in order to prevent any permanent damage being caused to the finished material brought about by the effects of ultra-violet light on the adhesive within the tape.
- 4.9. The Price does not include any fixing lugs or any bolts or brackets to suit any structural attachments nor does it include any panels or any bespoke aluminium pressings, non-standard brackets or flashings that may be required. All mastics and fixings relating to installation are also excluded.

5. **DELIVERY**

- 5.1. Delivery of an Order shall be completed when the Supplier places the Order at the Customer's disposal at the location specified in the Order.
- 5.2. The Supplier may deliver Orders by instalments, which may be invoiced and paid for separately. References in these Terms of Sale to Orders shall, where applicable, be read as references to instalments.
- 5.3. Delays in the delivery of an Order shall **not** entitle the Customer to:
 - 5.3.1. refuse to take delivery of the Order; or
 - 5.3.2. claim damages.
- 5.4. The Supplier shall have no liability for any failure or delay in delivering an Order to the extent that such failure or delay is caused by the Customer's failure to comply with its obligations under these Terms of Sale.
- 5.5. If the Customer fails to take delivery of an Order on the Delivery Date then, except where such failure or delay is caused by the Supplier's failure to comply with its obligations under these Terms of Sale:

- 5.5.1. delivery of the Order shall be deemed to have been completed at 9.00am on the Delivery Date; and
- 5.5.2. the Supplier shall store the Order until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 5.6. The Order shall be accompanied by a delivery note from the Supplier showing the Order Number, the date of the Order, the type and quantity of Products included in the Order and, in the case of an Order being delivered by instalments, the outstanding balance of Products remaining to be delivered.
- 5.7. Packaging materials shall remain the Supplier's property and the Customer shall make them available for collection at such times as the Supplier shall reasonably request. Returns of packaging materials shall be at the Supplier's expense.
- 6. ACCEPTANCE AND DEFECTIVE PRODUCTS**
- 6.1. The Customer may reject any Products delivered to it that do not comply with clause 4.2, provided that notice of rejection is given to the Supplier:
- 6.1.1. in the case of a defect that is apparent on normal visual inspection, within three business days of Delivery; and
- 6.1.2. in the case of a latent defect, within a reasonable time of the latent defect having become apparent.
- 6.2. If the Customer fails to give notice of rejection in accordance with clause 6.1, it shall be deemed to have accepted such Products.
- 6.3. If the Customer rejects Products under clause 6.1 then the Supplier shall, at the Supplier's discretion either:
- 6.3.1. repair or replace the rejected Products; or
- 6.3.2. repay the price of the rejected Products in full if paid for.
- 6.4. Once the Supplier has complied with the Customer's request, it shall have no further liability to the Customer in respect of the rejected Products' failure to comply with clause 4.2.
- 6.5. The terms of these Terms of Sale shall apply to any repaired or replacement Products supplied by the Supplier.
- 7. TITLE AND RISK**
- 7.1. Risk in Products shall pass to the Customer on Delivery.
- 7.2. Title to Products shall not pass to the Customer until the Supplier has received payment in full (in cash or cleared funds) for:
- 7.2.1. such Products; and
- 7.2.2. all other sums which are or which become due to the Supplier from the Customer for sales of Products or on any account.
- 7.3. Until title to Products has passed to the Customer, the Customer shall:
- 7.3.1. hold such Products on a fiduciary basis as the Supplier's bailee;
- 7.3.2. store such Products separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
- 7.3.3. not remove, deface or obscure any identifying mark or packaging on or relating to such Products; and
- 7.3.4. maintain such Products in satisfactory condition and keep them insured on the Supplier's behalf for their full price against all risks with an insurer that is reasonably acceptable to the Supplier. The Customer shall obtain an endorsement of the Supplier's interest in the Products on its insurance

policy, subject to the insurer being willing to make the endorsement. On request the Customer shall allow the Supplier to inspect such Products and the insurance policy,

but the Customer may resell or use Products in the ordinary course of its business.

7.4. If, before title to Products passes to the Customer, the Customer becomes subject to any of the following events:

- 7.4.1. the Customer suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- 7.4.2. the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;
- 7.4.3. a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Customer, other than for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;
- 7.4.4. a creditor or encumbrancer of the Customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14
- 7.4.5. an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Customer;
- 7.4.6. a floating charge holder over the Customer's assets has become entitled to appoint or has appointed an administrative receiver;
- 7.4.7. a person becomes entitled to appoint a receiver over the Customer's assets or a receiver is appointed over the Customer's assets;
- 7.4.8. the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or substantially the whole of its business; and
- 7.4.9. the Customer's financial position deteriorates to such an extent that in the Supplier's opinion the Customer's capability to adequately fulfil its obligations under this contract has been placed in jeopardy;

then, provided that such Products have not been resold and without limiting any other right or remedy the Supplier may have, the Supplier may at any time require the Customer to deliver up such Products and, if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the relevant Products are stored in order to recover them.

8. **PRODUCT PRICES AND DELIVERY**

- 8.1. The Product Prices are exclusive of amounts in respect of VAT. The Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on a supply of Products.
- 8.2. The Product Prices are ex works.
- 8.3. The Customer shall collect the Goods from the Supplier's premises at Unit 27-28 Moor Park Industrial Centre, Tolpits Lane, Watford, Hertfordshire, WD18 9ND or such other location as may be advised by the Supplier prior to delivery within three working days of the Supplier notifying the Customer that the Goods are ready.

9. **TERMS OF PAYMENT**

- 9.1. The Supplier shall be entitled to invoice the Customer for each Order on or at any time after Delivery. Each invoice shall quote the relevant Order Numbers.

- 9.2. The Customer shall pay invoices in full and in cleared funds on delivery of the Products or as set out in the Order. Payment shall be made by cheque or to a bank account nominated in writing by the Supplier.
- 9.3. Time for payment shall be of the essence.
- 9.4. If the Customer fails to make any payment due to the Supplier by the due date for payment (**due date**), then the Customer shall pay interest on the overdue amount at the rate of 3% per annum above the Bank of England base rate from time to time. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
- 9.5. If the Customer disputes any invoice or other statement of monies due, the Customer shall immediately notify the Supplier in writing. The parties shall negotiate in good faith to attempt to resolve the dispute promptly. The Supplier shall provide all such evidence as may be reasonably necessary to verify the disputed invoice or request for payment.
- 9.6. All payments shall be made in Sterling in full without set off, deduction or counterclaim.
- 9.7. All payments payable to the Supplier or the Customer under these Terms of Sale shall become due immediately on its termination. This clause 9.7 is without prejudice to any right to claim for interest under the law or under these Terms of Sale.
10. **LIMITATION OF LIABILITY**
- 10.1. This clause sets out the entire financial liability of Supplier (including any liability for the acts or omissions of its employees, agents and subcontractors) to the Customer in respect of:
- 10.1.1. any breach of these Terms of Sale however arising;
- 10.1.2. any use made or resale of the Products by the Customer, or of any product incorporating any of the Products; and
- 10.1.3. any representation, statement or tortious act or omission (including negligence) arising under or in connection with these Terms of Sale.
- 10.2. Nothing in these Terms of Sale shall limit or exclude the liability of the Supplier for:
- 10.2.1. death or personal injury resulting from negligence; or
- 10.2.2. fraud or fraudulent misrepresentation; or
- 10.2.3. breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
- 10.2.4. breach of section 2 of the Consumer Protection Act 1987.
- 10.3. Without prejudice to clause 10.2, the Supplier shall not under any circumstances whatever be liable to the Customer, whether in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise, for any:
- 10.3.1. loss of profit; or
- 10.3.2. loss of goodwill; or
- 10.3.3. loss of business; or
- 10.3.4. loss of business opportunity; or
- 10.3.5. loss of anticipated saving; or
- 10.3.6. special, indirect or consequential damage
- 10.3.7. loss or damage suffered by the Customer that arises under or in connection with these Terms of Sale.
- 10.4. The Supplier shall not be liable for any costs directly or indirectly incurred or losses suffered by the Customer or the Customer's customers if the Supplier has to replace the Products.

- 10.5. Without prejudice to clause 10.4, if the Customer installs Products which in accordance with clause 6.1.1 were defective on visual inspection, the Supplier shall have no liability for any costs incurred or losses suffered due to removing Products and reinstalling replacement Products.
- 10.6. Without prejudice to clauses 10.2, 10.3, 10.4 or 10.5, the Supplier's total liability arising under or in connection with these Terms of Sale, whether arising in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise, shall in all circumstances be limited to the value of the Order.
- 10.7. Nothing in this clause shall restrict or limit the Customer's general obligation at law to mitigate a loss which it may suffer or incur as a result of a matter that may give rise to a claim.
- 10.8. The Order shall be subject to these Terms of Sale to the exclusion of all other terms and conditions (including any terms or conditions which the Customer purports to apply under any purchase order, confirmation of order, specification or other document).
- 10.9. No terms or conditions endorsed on, delivered with or contained in the Customer's purchase order, confirmation of order, specification or other document shall form part of the Order simply as a result of such document being referred to in the Order.
11. **ASSIGNMENT AND SUB-CONTRACTING**
- 11.1. Neither party may assign or transfer or sub-contract any of its rights, benefits or obligations under these Terms of Sale without the prior written consent of the other party, provided that either party may assign, transfer or sub-contract its rights and obligations under these Terms of Sale to another member of its Group.
12. **FORCE MAJEURE**
- 12.1. The Supplier shall have no liability or responsibility for failure to fulfil its obligations under these Terms of Sale so long as and to the extent to which the fulfilment of such obligations are prevented, frustrated, hindered or delayed as a consequence of a Force Majeure Event.
- 12.2. The Supplier shall, as soon as reasonably practicable after the occurrence of a Force Majeure Event:
- 12.2.1. notify the Customer of the nature and extent of such Force Majeure Event; and
- 12.2.2. use all reasonable endeavours to remove any such causes and resume performance under these Terms of Sale as soon as feasible.
- 12.3. For the purposes of this clause 12, a **Force Majeure Event** means an event beyond the control of the Supplier (or any person acting on its behalf), which by its nature could not have been foreseen by such party (or such person), or, if it could have been foreseen, was unavoidable, and includes, without limitation, acts of God, storms, floods, riots, fires, sabotage, civil commotion or civil unrest, interference by civil or military authorities, acts of war (declared or undeclared) or armed hostilities or other national or international calamity or one or more acts of terrorism or failure of energy sources.
13. **SEVERANCE**
- 13.1. If any provision of these Terms of Sale (or part of a provision) is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.
- 13.2. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.
14. **VARIATION AND WAIVER**
- 14.1. Any variation of these terms must be in writing and be signed by or on behalf of the parties.
- 14.2. Any waiver of any right under these Terms of Sale is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and to the circumstances for which it is given.



- 14.3. No failure to exercise or delay in exercising any right or remedy provided under these Terms of Sale or by law constitutes a waiver of such right or remedy nor shall it prevent any future exercise or enforcement of such right or remedy.
- 14.4. No single or partial exercise of any right or remedy under these Terms of Sale shall prevent or restrict the further exercise of that or any other right or remedy.
- 15. **ENTIRE AGREEMENT**
- 15.1. These Terms of Sale and the Order constitute the whole agreement and understanding of the parties and supersede any previous arrangement, understanding or agreement between them relating to the Order.
- 15.2. The Customer acknowledges that, in entering into the Order, it has not relied on any statement, representation, assurance or warranty (whether made negligently or innocently) other than those expressly set out in these Terms of Sale and the Order.
- 15.3. Nothing in this clause shall limit or exclude any liability for fraud.
- 16. **RIGHTS OF THIRD PARTIES**
- 16.1. No term of these Terms of Sale shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to these Terms of Sale, but this does not affect any right or remedy of a third party which exists or is available apart from under that Act.
- 17. **NOTICES**
- 17.1. All notices sent must be sent in writing to the addresses provided in the Order or as otherwise advised to the Parties. Notice will be deemed received and properly served three days after the date of posting of any letter. In proving the service of any notice it will be sufficient to prove that the letter was properly addressed, stamped and placed in the post.
- 18. **GOVERNING LAW AND JURISDICTION**
- 18.1. These Terms of Sale and any dispute or claim arising out of or in connection with them or the Order shall be governed by and construed in accordance with English law.
- 18.2. The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the Order.

Signed for and on behalf of the Supplier:	Signed for and on behalf of the Customer:
Signature:	Signature:
Name:	Name:
Date:	Date: