

## Terms and Conditions: Windows to Trade/Retail customers

The customer's attention is drawn in particular to the provisions of clause 9.

### 1.0 Interpretation

1.1 Definitions. In these conditions, the following definitions apply:

**Business Day:** a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

**Conditions:** the terms and conditions set out in this document as amended from time to time in accordance with clause 11.6.

**Contract:** the contract between BDC Aluminium Windows and the Customer for the sale and purchase of the Goods in accordance with these Conditions.

**Customer:** the person or firm who purchases the Goods from BDC Windows.

**Force Majeure Event:** has the meaning given in clause 10.

**Goods:** the goods (or any part of them) set out in the Order.

**Order:** the Customer's order for the Goods, as set out overleaf.

**Specification:** any specification for the Goods, including any related plans, measurements and drawings, that is agreed by the Customer and BDC Windows.

The Bi-Fold Door Company Ltd trading as BDC Architectural Aluminium Company Registration Number 6712673

1.2 Construction. In these Conditions, the following rules apply:

- A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- A reference to a party includes its personal representatives, successors or permitted assigns.
- A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
- Any phrase introduced by the by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- A reference to writing or written includes faxes and e-mails.



## 2.0 Basis of Contract

- 2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.2 The Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order and any applicable Specification submitted by the Customer (whether online or otherwise) are complete and accurate.
- 2.3 The Order shall only be deemed to be accepted when BDC Windows issues a written acceptance of the Order (Order Acknowledgement), at which point the Contract shall come into existence.
- 2.4 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of BDC Windows which is not set out in the Contract.
- 2.5 Any samples, drawings, descriptive matter, or advertising produced by BDC Windows and any descriptions or illustrations contained in BDC Windows catalogues or brochures are produced for the sole purpose for the giving an approximate idea of the Goods described in them. They shall not form part of the Contract or have any contractual force.
- 2.6 A quotation for the Goods given by BDC Windows shall not constitute an offer. A quotation shall only be valid for a period of 30 Business Days from its date of issue.

## 3.0 Goods

- 3.1 The Goods are described in BDC Window's Order Acknowledgement form as modified by any applicable Specification.
- 3.2 The images of the products on our website, brochures, leaflets and catalogues are for illustrative purposes only. Although we have made every effort to display the colours accurately, we cannot guarantee that a device's display of the colours accurately, we cannot guarantee that a device's display of the colours accurately reflects the colour of the products. Your product may vary slightly from those images.
- 3.3 If we are making the product to measurements or specifications you have given us you are responsible for ensuring that these measurements and specifications are correct. You can find information and tips on how to measure on our website or by contacting us.
- 3.4 You will not be entitled to end the contract with us as a result of your failure to provide us with accurate measurements and specifications for the products and we are not able to advise you upon these matters. You should therefore, take appropriate professional advice (for example, from an architect or engineer) before placing your order.
- 3.5 Certain products (for example coloured products) are not in our general range and we will have to order them from a supplier. We have no control over the length of time it takes for the supplier to deliver those products to us and this may cause delays in the supply of your products to you (please see clause 4.4 below). You should therefore ensure that you take into account any potential delays in delivery in relation to any building or construction project



timings as we will not accept any liability for any losses that arise out of delays in the supply of products for this reason.

3.6 To the extent that the Goods are to be manufactured in accordance with a Specification supplied by the Customer, the Customer shall indemnify BDC windows against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by BDC Windows in connection with any claim made against BDC Windows for actual or alleged infringement of a third party's intellectual property rights arising out of or connection with BDC Windows use of the Specification. This clause shall survive termination of the Contract.

3.7 BDC Windows reserves the right to amend the specification of the Goods if required by any applicable statutory or regulatory requirements.

## 4. Delivery

4.1 BDC Windows shall ensure that each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, all relevant Customer and Supplier reference numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered.

4.2 BDC Windows shall deliver the Goods to the location set out in the Order or such other location as the parties may agree (Delivery Location) at any time after BDC Windows notifies the Customer that the Goods are ready.

4.3 Delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location.

4.4 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. BDC aluminium Windows shall not be liable for any delay in delivery of the Goods that is caused by:

- a) a Force Majeure Event; or
- b) the Customer's failure to provide BDC Windows with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods;
- c) damage to the products or parts we receive from our supplier; or
- d) damage to the products during transit; or
- e) you placing an order for a particular colour or finish to a product which is not in our general range and it takes longer than usual for us to receive the same from our supplier (see clause 3.5 above).

4.5 If BDC Windows fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. BDC Windows shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure or the Customer's failure to provide BDC Windows with adequate delivery instructions that are relevant to the supply of the Goods.



4.6 If the Customer fails to take delivery of the Goods within three Business Days of BDC Windows notifying the Customer that the Goods are ready, then, except where such failure or delay is caused by a Force Majeure Event or BDC Windows failure to comply with its obligations under the Contract:

a) delivery of the Goods shall be deemed to have been completed at 9.00am on the third Business Day after the day on which BDC Windows notified the Customer that the Goods were ready

4.7 If 10 Business Days after the day on which BDC Windows notified the Customer that the Goods were ready for delivery the Customer has not taken delivery of them, BDC Windows may resell or otherwise dispose of part or all of the Goods and, after reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.

4.8 BDC Windows may deliver the Goods by instalment. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

## 5. Quality

5.1 The Warranty Period is as follows:

- a) 10 years from the date of delivery for all aluminium products.
- b) 1 year from the date of delivery for hardware and moving parts.
- c) 5 years for glass units not misting or breaking down.

5.2 BDC Windows warrants that on delivery, and during the Warranty Period, the Goods shall:

- a) conform in all material respects with their description and any applicable Specification;
- b) be free from material defects in design, material and workmanship.

5.3 Subject to clause 5.4, if:

- a) the Customer gives notice in writing to BDC Windows during the Warranty Period and within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 5.2;
- b) BDC Windows is given a reasonable opportunity of examining such Goods; and
- c) the Customer (if asked to do so by BDC Windows) returns such Goods to BDC Windows place of business at the Customer's cost.

BDC Windows shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.

5.4 BDC Windows shall not be liable for Goods' failure to comply with the warranty set out in clause 5.1 in any of the following events:

- a) the Customer makes any further use of such Goods after giving notice in accordance with clause 5.3;



# BDC ARCHITECTURAL ALUMINIUM

7 Stepfield Industrial Estate, Stepfield, Witham, Essex CM8 3TH • Tel: 01245 474747 • Email: info@bdcaluminium.co.uk

- b) the defect arises because the Customer failed to follow BDC Windows oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;
- c) the defect arises as a result of BDC Windows following any drawing, design or Specification supplied by the Customer;
- d) the Customer alters or repairs such Goods without the written consent of BDC Windows;
- e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
- f) the Goods differ from their description or the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

5.5 Except as provided in this clause 5, BDC Windows shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clauses 5.1 and 5.2.

5.6 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.

5.7 These Conditions shall apply to any repaired or replacement Goods supplied by BDC Windows.

5.8 All guarantees are given in good faith. However, if it is deemed after a visit from a company representative that our product has been misused, tampered or damaged in anyway etc, BDC will render the guarantee null and void, leaving any remedial work to be carried out at a pre-arranged fee which will be payable before any work commences.

## 6. Title and Risk

6.1 The risk in the Goods shall pass to the Customer on completion of delivery.

6.2 Until title to the Goods has passed to the Customer, the Customer shall:

- a) hold the Goods on a fiduciary basis as BDC Windows bailee;
  - b) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as BDC Windows property;
  - c) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
  - d) maintain the Goods in satisfactory condition and keep them insured against all risk for their full price from the date of delivery;
  - e) notify BDC Windows immediately if it becomes subject to any of the events listed in clause 8.2; and
  - f) give BDC Windows such information relating to the Goods as BDC Windows may require from time to time,
- but the Customer may resell or use the Goods in the ordinary course of its business.

6.4 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 8.2, then, without limiting any other right or remedy BDC Windows may have:



The Bi-Fold Door Company Limited trading as BD Aluminium  
Company Registration Number 6712673 • VAT No. 885270418



- a) the Customer's right to resell Goods or use them in the ordinary course of its business ceases immediately; and
- b) BDC Windows may at any time:
  - i) require the Customer to deliver up all Goods in its possession which have not been resold, or irrevocably incorporated into another product; and
  - ii) if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

## 7. Price and Payment

7.1 The price of the Goods shall be the price set out in the written quotation.

7.2 BDC Windows may, by giving notice to the Customer at any time before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:

- a) any factor beyond BDC Windows control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
- b) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Specification; or
- c) any delay caused by any instructions of the Customer or failure of the Customer to give BDC Windows adequate or accurate information or instructions.

7.3 The price of the Goods is exclusive of amounts in respect of value added tax (VAT). The Customer shall, on receipt of a valid VAT Invoice from BDC Windows, pay to BDC Windows such additional amounts in respect of VAT as are chargeable on the supply of the Goods.

7.4 You must pay a deposit for the Goods at the time that you place the order.

7.5 The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against BDC Windows in order to justify withholding payment of any such amount in whole or in part. BDC Windows may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by BDC Windows to the Customer.

## 8. Customer's insolvency or Incapacity

8.1 If the Customer becomes subject to any of the events listed in clause 8.2, or BDC Windows reasonably believes that the Customer is about to become subject to any of them and notifies the Customer accordingly, then, without limiting any other right or remedy available to BDC Windows, BDC Windows may cancel or suspend all further deliveries under the Contract or under any other contract between the Customer and BDC Windows without incurring any liability to the Customer, and all outstanding sums in respect of Goods delivered to the Customer shall become immediately due.



8.2 For the purposes of clause 8.1, the relevant events are:

- a) 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 (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply;
- b) 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 arrangements with its creditors other than (where the Customer is a company) where these events take place 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;
- c) (being a company) 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;
- d) (being an individual) the Customer is the subject of a bankruptcy petition or order;
- e) 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 days;
- f) (being a company) 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;
- g) (being a company) a floating charge holder over the Customer's assets has become entitled to appoint or has appointed an administrative receiver;
- h) a person becomes entitled to appoint a receiver over the Customer's assets or a receiver is appointed over the Customer's assets;
- i) any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 8.2 a) to clause h) (inclusive);
- j) the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or substantially the whole of its business;
- K) the Customer's financial position deteriorates to such an extent that in BDC Windows opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; and
- l) (being an individual) the Customer dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.



8.3 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination. Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

## 9. Limitation of Liability

9.1 Nothing in these Conditions shall limit or exclude BDC Windows liability for:

- a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
- b) fraud or fraudulent misrepresentation;
- c) breach of the terms implied by section 12 of the Sale of Goods Act 1979;
- d) defective products under the Consumer Protection Act 1987; or
- e) any matter in respect of which it would be unlawful for BDC Windows to exclude or restrict liability.

9.2 Subject to clause 9.1:

- a) BDC Windows shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising or in connection with the Contract; and
- b) BDC Window's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed 75% of the price of the Goods.

## 10. Force Majeure

Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A Force Majeure Event means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors.

## 11. General

11.1 Refunds.



a) How we will refund you. We will refund you the price you paid for the Goods by the method you used for payment. However, we may make deductions from the price, depending on the reason for the Contract coming to an end.

b) When your refund will be made. We will make any refunds due to you as soon as possible and in any event within 14 days from the day on which we collect the Goods back from you.

## 11.2 Assignment and Subcontracting.

a) BDC Windows may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

b) The Customer may not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of BDC Windows.

## 11.3 Notices

a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post, recorded delivery, commercial courier, fax or email.

b) A notice or other communication shall be deemed to have received: if delivered personally, when left at the address referred to in clause 11.2 a); if sent by pre-paid first class post or recorded delivery, at 9.00am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the couriers delivery receipt is signed; or, if sent by fax or email, one Business Day after transmission.

c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

## 11.4 Severance

a) If any court or competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.

b) If any invalid, enforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

## 11.5 Waiver

A waiver of any right or remedy under the Contract is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

11.6 Third party rights. A person who is not a party to the Contract shall not have any rights under or in connection with it.



# BDC ARCHITECTURAL ALUMINIUM

7 Stepfield Industrial Estate, Stepfield, Witham, Essex CM8 3TH • Tel: 01245 474747 • Email: [info@bdcaluminium.co.uk](mailto:info@bdcaluminium.co.uk)

---

11.7 Variation. Except as set out in these Conditions, any variation to the Contract, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing and signed by BDC Windows.

11.8 Governing law and jurisdiction. The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including not-contractual disputes or claims), shall be governed by, and construed in accordance with English Law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England.



The Bi-Fold Door Company Limited trading as BD Aluminium  
Company Registration Number 6712673 • VAT No. 885270418

