

Hayley Windows Design & Installation Limited

Terms and Conditions of Sale

1. Interpretation

The following definitions and rules of interpretation apply in these Conditions.

1.1 Definitions:

Business Day: a day other than a Saturday, Sunday or public holiday in England.

Collection Location: Hayley Windows' premises or such other location as may be advised by Hayley Windows.

Conditions: these terms and conditions as amended from time to time in accordance with clause 15.11.

Contract: the contract between Hayley Windows and the Customer for the supply of Goods and/or Services in accordance with these Conditions.

Control: has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression **change of Control** will be construed accordingly.

Customer: the person or firm who purchases the Goods and/or Services from Hayley Windows.

Delivery Location: the location set out in the Order or such other location as the parties may agree.

Force Majeure Event: an event or circumstance beyond a party's reasonable control including (without limitation) acts of God, flood, drought, earthquake or other natural disaster, epidemic or pandemic, terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations, nuclear, chemical or biological contamination or sonic boom, any law or any action taken by a government or public authority, collapse of buildings, fire, explosion or accident, any labour or trade dispute, strikes, industrial action or lockouts (other than in each case by the party seeking to rely on the existence of the Force Majeure Event, or companies in the same group as that party), non-performance by suppliers or subcontractors (other than by companies in the same group as the party seeking to rely on the existence of the Force Majeure Event) and interruption or failure of utility service.

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

Goods Specification: the specification for the Goods, including any relevant plans or drawings, that is agreed in writing by the Customer and Hayley Windows.

Hayley Windows: Hayley Windows Design & Installation Limited registered in England and Wales with company number 04199674.

Installation Services: the window installation services supplied by Hayley Windows to the Customer as set out in the Services Specification.

Order: the Customer's order for the supply of Goods and/or Services, as set out in the order form signed by the Customer.

Repair Services: the repair services supplied by Hayley Windows to the Customer as set out in the Services Specification which may include, by way of example, the repair or replacement of parts such as sealed units, glass panels or locks.

Services: the Installation Services or Repair Services, as the case may be.

Services Specification: the description or specification for the Services agreed between the parties in writing, including any relevant plans or drawings.

Site: the location where the Services are to be performed.

1.2 Interpretation:

1.2.1 A reference to:

- (a) a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- (b) a statute or statutory provision is a reference to it as amended or re-enacted and will include all subordinate legislation made under that statute or statutory provision;

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- (c) any words following the terms **including** or **include** or any similar expression will be construed as illustrative and will not limit the sense of the words, description, definition, phrase or term preceding those terms;
- (d) a reference to **writing** or **written** includes email but not fax.

2. Basis of Contract

- 2.1 These Conditions apply in all circumstances when Hayley Windows and the Customer are trading with each other in the course of their respective businesses.
- 2.2 The Order constitutes an offer by the Customer to purchase Goods and/or Services in accordance with these Conditions. The Customer is responsible for ensuring that the Order and the information it provides for the applicable Goods Specification and/or Services Specification are complete and accurate.
- 2.3 The Order will only be deemed to be accepted when Hayley Windows issues written acceptance of the Order by countersigning the order form signed by the Customer and providing a copy of the same to the Customer at which point and on which date the Contract will come into existence (**Commencement Date**).
- 2.4 Any samples, drawings, descriptive matter or advertising issued by Hayley Windows concerning the Goods and the Services are issued or published for the sole purpose of giving an approximate idea of the Goods and/or Services described in them. They will not form part of the Contract nor have any contractual force.
- 2.5 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 law, trade custom, practice or course of dealing.
- 2.6 Any quotation given by Hayley Windows will not constitute an offer, and is only valid for a period of 30 Business Days from its date of issue.
- 2.7 All of these Conditions will apply to the supply of both Goods and Services except where application to one or the other is specified.

3. Specifications and Surveys

- 3.1 The parties will use reasonable endeavours to agree the Goods Specification and, if applicable, the Services Specification.
- 3.2 If the parties cannot agree the Goods Specification or the Services Specification, without prejudice to any other rights or remedies Hayley Windows may have, Hayley Windows may cancel the Customer's Order without liability. The Customer will pay Hayley Windows on a time and materials basis fair and reasonable compensation for any work in progress on or in relation to the Goods/Services at the time of termination and management time incurred by Hayley Windows in relation to that Order prior to the time of termination including (without limitation) the cost of any survey carried out and the cost of any Goods already purchased or commissioned for manufacture, but whilst such compensation will not include loss of profits in relation anything which Hayley Windows would have done under the Contract had this not been terminated, it is agreed that Hayley Windows will be entitled to its usual margin on all work it has carried out up to termination.
- 3.3 If requested at any time, the Customer will allow Hayley Windows (or its appointed surveyor) to inspect the Site to take measurements or for any other reason relating to the Goods/Services.
- 3.4 Unless otherwise agreed, the Customer will attend all feasibility, inspection, survey or other meetings relating to the Goods and/or Services required by Hayley Windows at the Customer's expense.
- 3.5 It is the Customer's responsibility to ensure that all measurements, plans, drawings and designs it provides and which form part of the Goods Specification and the Services Specification are accurate, complete and fit for the intended purpose.
- 3.6 If on inspection or survey of the Site it becomes apparent to Hayley Windows that there are one or more problems:
 - 3.6.1 which will result in a change to the Goods Specification or the Services Specification;

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- 3.6.2 with the structure of the building into which the Goods are to be installed;
- 3.6.3 with any dimensions or measurements provided by the Customer;
- 3.6.4 with access to the Site;
- 3.6.5 relating to technical matters regarding the Goods and/or Services;
- 3.6.6 resulting (or which may result) in additional works being required before the Services can be carried out or alongside the Services,

which result in the requirement to increase the price of the Goods and/or the Services, then Hayley Windows reserves the right to so increase the price of the Goods and/or the Services accordingly. If the Customer does not accept such price increase, Hayley Windows may cancel the Customer's Order without liability and the Customer will pay Hayley Windows fair and reasonable compensation for any work in progress on or in relation to the Goods and/or Services at the time of termination and management time incurred by Hayley Windows in relation to that Order prior to the time of termination including (without limitation) the cost of any survey carried out and the cost of any Goods already purchased or commissioned for manufacture, but such compensation will not include loss of anticipated profits or any consequential loss.

4. Goods

- 4.1 The Goods are described in the Goods Specification.
- 4.2 To the extent that the Goods are to be manufactured in accordance with a Goods Specification supplied by the Customer, the Customer will indemnify Hayley 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 costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by Hayley Windows arising out of or in connection with any claim made against Hayley Windows for:
 - 4.2.1 actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with Hayley Windows' use of the Goods Specification; or
 - 4.2.2 personal injury, loss or damage to property arising from the use of the Goods except to the extent that such injury, loss or damage is solely attributable to the negligence or default of Hayley Windows or Hayley Windows' employees or agents.
- 4.3 Clause 4.2 will survive termination of the Contract.
- 4.4 If required by any applicable statute, regulation or law, Hayley Windows reserves the right to amend the Goods Specification for the purposes of achieving compliance or to cease working on an Order if required. In these circumstances, to the extent legally possible, Hayley Windows will raise any such issue promptly with the Customer and the parties will work together using reasonable endeavours to agree a solution, including an amended Goods Specification if necessary. Hayley Windows reserves the right to increase the price of the Goods if any such solution or amendment to the Goods Specification results in increased costs to Hayley Windows.
- 4.5 Any advice or recommendations given by Hayley Windows or its employees or agents relating to the suitability of the Goods is supplied in good faith but the Customer must satisfy itself that the Goods are suitable for the intended purpose.

5. Delivery and Collection

- 5.1 Hayley Windows reserves the right at any time to refuse to make delivery of the Goods if in its sole opinion the storage and offloading facilities proposed by the Customer are unsafe or inadequate for the Goods. All reasonable costs incurred by Hayley Windows in attempting to make delivery in these circumstances will be for the account of the Customer. Delivery of the Goods by Hayley Windows or Hayley Windows' agent for such delivery will in no way constitute a commitment or representation by Hayley Windows as to the suitability of the Buyer's storage or offloading facilities.
- 5.2 If Hayley Windows is supplying Goods and Services, Hayley Windows will deliver the Goods to the Delivery Location. If Hayley Windows delivers the Goods to the Customer:
 - 5.2.1 Hayley Windows will ensure that each delivery of the Goods is accompanied by a delivery note;

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- 5.2.2 Hayley Windows will deliver the Goods to the Delivery Location;
- 5.2.3 the risk in the Goods will pass to the Customer on completion of delivery; and
- 5.2.4 delivery is completed on the completion of the unloading of the Goods at the Delivery Location.
- 5.3 If Hayley Windows is supplying only Goods, the Customer will collect the Goods. If the Customer collects the Goods:
- 5.3.1 Hayley Windows will make available to the Customer a delivery note;
- 5.3.2 the Customer will collect the Goods from the Collection Location within 5 Business Days of Hayley Windows notifying the Customer that the Goods are ready for collection;
- 5.3.3 the risk in the Goods will pass to the Customer on collection; and
- 5.3.4 collection is completed on the completion of loading of the Goods at the Collection Location.
- 5.4 Any dates quoted for delivery/collection of Goods are approximate only, and the time of delivery/collection is not of the essence. Hayley Windows will not be liable for any delay in delivery or collection of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide Hayley Windows with adequate delivery instructions or any other instructions or information that are relevant to the supply of the Goods.
- 5.5 The Customer acknowledges that since Hayley Windows does not manufacture the Goods, it is reliant upon its suppliers and if there is a delay with the supplier's manufacture and supply then that will have that resultant effect of delaying Hayley Windows' supply of Goods and/or Services to the Customer.
- 5.6 If the Customer wishes to change a pre-agreed delivery/collection date then it must give Hayley Windows 72 hours' notice. The Customer will pay Hayley Windows' costs in connection with such a request including (without limitation) storage and re-delivery costs.
- 5.7 The Customer will not be liable for the price of and Hayley Windows will refund any amount paid in respect of Goods, which Hayley Windows fails to deliver or make available for collection. Subject only to clause 12 but notwithstanding any other provision of these Conditions or the Contract, Hayley Windows' further liability in respect of such failure will be limited to the lesser of the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality at the cheapest price available and 10% of the price of the Goods in respect of which such failure occurred. However, Hayley Windows will have no liability for any failure to deliver Goods or make the Goods available for collection to the extent that such failure is caused by a Force Majeure Event or any breach or failure by the Customer.
- 5.8 If the Customer fails to take or accept delivery of the Goods within 5 Business Days of Hayley Windows notifying the Customer that the Goods are ready, then, except where such failure or delay is caused by a Force Majeure Event or Hayley Windows' failure to comply with its obligations under the Contract:
- 5.8.1 delivery/collection of the Goods will be deemed to have been completed at 9.00 am on the fifth Business Day after the day on which Hayley Windows notified the Customer that the Goods were ready for delivery/collection; and
- 5.8.2 Hayley Windows will store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 5.9 If 10 Business Days after the day on which Hayley Windows notified the Customer that the Goods were ready for delivery or collection the Customer has not taken or accepted delivery of them, Hayley Windows may resell or otherwise dispose of part or all of the Goods.
- 5.10 Hayley Windows may deliver the Goods or make the Goods available for collection by instalments, which will be invoiced and paid for separately. Any delay in delivery or defect in an instalment will not entitle the Customer to cancel any other instalment.
- 5.11 All deliveries and collections must be signed for as confirmation of receipt and acknowledgement that the correct number of units have been delivered/collected.

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6. **Quality**
- 6.1 The Customer acknowledges that Hayley Windows is not the manufacturer of the Goods. Hayley Windows will use all reasonable endeavours to pass on to the Customer the benefit of any applicable manufacturer warranty in connection with the Goods.
- 6.2 If Hayley Windows has provided Goods and Installation Services, Hayley Windows warrants that on delivery, and for a period of 10 years from the date of installation, the Goods will:
- 6.2.1 conform in all material respects with the Goods Specification; and
 - 6.2.2 be free from material defects in design, material and workmanship.
- 6.3 The warranty in clause 6.2 will not apply to:
- 6.3.1 glass that is broken or cracked after the date of completion of the Installation Services;
 - 6.3.2 Repair Services.
- 6.4 If Hayley Windows has provided Goods only, Hayley Windows warrants that on collection, the Goods will conform in all material respects with the Goods Specification and be free from material defects in design, material and workmanship.
- 6.5 If Hayley Windows has provided Repair Services comprising the replacement of sealed unit(s), Hayley Windows warrants that on delivery, and for a period of 2 years from the date of installation of the replacement sealed unit(s), those Goods will:
- 6.5.1 conform in all material respects with the Goods Specification; and
 - 6.5.2 be free from material defects in design, material and workmanship.
- 6.6 The warranty in clause 6.5 will not apply to glass that is broken or cracked after the date of completion of the Repair Services.
- 6.7 Subject to clause 6.8, Hayley Windows will, at its option, repair or replace any Goods it agrees are defective provided that:
- 6.7.1 the Customer gives notice in writing during the relevant warranty period within a reasonable time of discovery (and within 24 hours of delivery or, as the case may be collection, if the alleged defect is apparent on visual inspection) that some or all of the Goods do not comply with the relevant warranty set out in clause 6.2, 6.4 or 6.5;
 - 6.7.2 Hayley Windows is given a reasonable opportunity of examining such Goods/the Site; and
 - 6.7.3 the Customer (if asked to do so by Hayley Windows) returns such Goods to Hayley Windows' place of business.
- 6.8 Hayley Windows will not be liable for any failure of the Goods to comply with the relevant warranties in clauses 6.2, 6.4 and 6.5 if:
- 6.8.1 the Goods are moved away from the location where they were originally installed by Hayley Windows;
 - 6.8.2 further use is made of such Goods after a notice is given in accordance with clause 6.7;
 - 6.8.3 the defect arises because the Customer failed to follow Hayley Windows' (or the manufacturer's) oral or written instructions as to the storage, commissioning, use or maintenance of the Goods or components/parts utilised by Hayley Windows as part of the Services or (if there are none) good trade practice;
 - 6.8.4 the defect arises as a result of Hayley Windows following any drawing, design, Goods Specification or Services Specification supplied by the Customer;
 - 6.8.5 the Goods are altered or repaired without the written consent of Hayley Windows;
 - 6.8.6 the Services (or any part thereof) are re-performed without the written consent of Hayley Windows;
 - 6.8.7 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or
 - 6.8.8 the Goods differ from the Goods Specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards.
- 6.9 Except as provided in this clause 6, Hayley Windows will have no liability to the Customer in respect of any failure of the Goods to comply with the relevant warranty set out in clause 6.2, 6.4 and 6.5.

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- 7. Title**
- 7.1 Title to the Goods will not pass to the Customer until the earlier of:
- 7.1.1 Hayley Windows receiving payment in full (in cash or cleared funds) for the Goods and any other goods that Hayley Windows has supplied to the Customer in respect of which payment has become due, in which case title to the Goods will pass at the time of payment of all such sums; and
 - 7.1.2 the Customer reselling the Goods, in which case title to the Goods will pass to the Customer at the time specified in clause 7.3.
- 7.2 Until title to the Goods has passed to the Customer, the Customer will:
- 7.2.1 store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as Hayley Windows' property;
 - 7.2.2 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - 7.2.3 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery/collection;
 - 7.2.4 notify Hayley Windows immediately if it becomes subject to any of the events listed in clause 13.1.2 - 13.1.4 inclusive; and
 - 7.2.5 give Hayley Windows such information relating to the Goods as Hayley Windows may require from time to time.
- 7.3 Subject to clause 7.4, the Customer may resell or use the Goods in the ordinary course of its business (but not otherwise) before Hayley Windows receives payment for the Goods. However, if the Customer resells the Goods before that time:
- 7.3.1 it does so as principal and not as Hayley Windows' agent; and
 - 7.3.2 title to the Goods will pass from Hayley Windows to the Customer immediately before the time at which resale by the Customer occurs.
- 7.4 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 13.1.2 - 13.1.4 inclusive, then, without limiting any other right or remedy Hayley Windows may have:
- 7.4.1 the Customer's right to resell the Goods or use them in the ordinary course of its business ceases immediately; and
 - 7.4.2 Hayley Windows may at any time:
 - (a) require the Customer to deliver up all Goods in its possession that have not been resold, or irrevocably incorporated into another product; and
 - (b) 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.
- 8. Supply of Services**
- 8.1 Hayley Windows will supply the Services in accordance with the Services Specification in all material respects.
- 8.2 Hayley Windows will use all reasonable endeavours to meet any performance dates for the Services specified in the Services Specification or otherwise agreed in writing with the Customer, but any such dates will be estimates only and time will not be of the essence for the performance of the Services.
- 8.3 If required by any applicable statute, regulation or law, Hayley Windows reserves the right to amend the Services Specification to the extent required to achieve compliance or to cease providing Services. In these circumstances, to the extent legally possible, Hayley Windows will raise any such issue promptly with the Customer and the parties will work together using reasonable endeavours to agree a solution, including an amended Services Specification if necessary. Hayley Windows reserves the right to increase the price of the Services if any such solution or amendment to the Services Specification results in increased costs to Hayley Windows.
- 8.4 Hayley Windows warrants to the Customer that the Services will be provided using reasonable care and skill.

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- 8.5 If the Customer wishes to change a pre-agreed date for the supply of the Services then it must give Hayley Windows 72 hours' notice. The Customer will pay Hayley Windows' costs in connection with such a request.
- 8.6 Hayley Windows will not be responsible for damage to the Site, Goods or Services by other tradespeople.
- 8.7 Hayley Windows will not return to the Site to carry out additional cleaning and/or tidying necessitated by the actions or omissions of other tradespeople.
- 8.8 The Customer acknowledges and accepts that if other work required to be done at the Site prevents Hayley Windows from completing the Installation Services to its usual standard on the installation date, Hayley Windows will use all reasonable endeavours to complete the Installation Services in accordance with the Services Specification but that may not be possible. For example, there may be certain parts and/or trims that Hayley Windows cannot fit due to other works at the Site and Hayley Windows will therefore leave such parts/trims at the Site for the Customer to fit. Hayley Windows will not be required to return to the Site on another date to carry out finishing touches or to fit parts and/or trims it was unable to fit on the installation date through no fault of Hayley Windows, unless otherwise agreed between the parties in writing.

9. Customer's Obligations

9.1 The Customer will:

- 9.1.1 co-operate with Hayley Windows in all matters relating to the Services;
 - 9.1.2 ensure that Hayley Windows, its employees, agents, consultants and sub-contractors, have access to the Site and to any other office accommodation and facilities including (without limitation) water and electricity, as reasonably required by Hayley Windows to:
 - (a) provide the Services and store related equipment and materials; and
 - (b) undertake any survey, planning or preparatory meetings or visits,
 - 9.1.3 ensure that Hayley Windows, its employees, agents, consultants and sub-contractors, have sufficient unloading space and parking space near to the Site;
 - 9.1.4 provide Hayley Windows with such information and materials as Hayley Windows may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
 - 9.1.5 ensure that the Site is properly prepared and cleared for the supply of the Services including (without limitation) ensuring that all furniture, curtains, blinds and other items are removed from the vicinity of the installation area or appropriately covered;
 - 9.1.6 move any services, fixtures and fittings including (without limitation) radiators, pipes, electricity, telephone and television cables as required to enable Hayley Windows to carry out the Services;
 - 9.1.7 obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;
 - 9.1.8 comply with all applicable laws, including health and safety laws;
 - 9.1.9 keep all materials, equipment, documents and other property of Hayley Windows (**Hayley Windows' Materials**) at the Site in safe custody at its own risk, maintain Hayley Windows' Materials in good condition until returned to Hayley Windows, and not dispose of or use Hayley Windows' Materials other than in accordance with Hayley Windows' written instructions or authorisation; and
 - 9.1.10 comply with any additional obligations as set out in the Services Specification and the Goods Specification.
- 9.2 In this clause 9.2, **Customer Default** means any act, failure or omission by the Customer to perform any relevant obligation, which prevents or delays Hayley Windows' performance of any of its obligations under the Contract. Where Hayley Windows is so prevented or delayed:
 - 9.2.1 without limiting or affecting any other right or remedy available to it, Hayley Windows will have the right to suspend performance of the Services until the Customer Default is remedied, and to rely on the Customer Default to relieve it from the performance of any

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of its obligations in each case to the extent the Customer Default prevents or delays Hayley Windows' performance of any of its obligations;

- 9.2.2 subject always to clause 12.2, Hayley Windows will not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from Hayley Windows' failure or delay to perform any of its obligations that result from prevention or delay due to Customer Default as set out in this clause 9.2; and
- 9.2.3 the Customer will reimburse Hayley Windows on written demand for any costs or losses sustained or incurred by Hayley Windows arising directly or indirectly from the Customer Default.

10. Charges and Payment

- 10.1 The price for Goods will be confirmed in Hayley Windows' confirmation of Order given pursuant to clause 2.3 but is subject to change by Hayley Windows after it conducts any surveys or inspections pursuant to clauses 3.3 or 3.4. That price will be inclusive of all costs and charges of packaging, insurance and transport of the Goods.
- 10.2 The charges for the Services will be confirmed in Hayley Windows' confirmation of Order given pursuant to clause 2.3 but is subject to change by Hayley Windows after it conducts any surveys or inspections pursuant to clauses 3.3 or 3.4.
- 10.3 The prices determined in accordance with clauses 10.1 and 10.2 do not include the cost of:
 - 10.3.1 removing any dangerous waste materials such as asbestos found when carrying out the Services. If, during the execution of the works, asbestos is encountered, Hayley Windows reserves the right to withdraw immediately until the site is made safe at the Customer's cost;
 - 10.3.2 the repair or replacement of any rotten timber or defective lintels;
 - 10.3.3 any work not mentioned in the Services Specification.
- 10.4 Hayley Windows reserves the right to increase the price of the Goods and/or Services, by giving notice to the Customer at any time before delivery, collection or performance (as the case may be), to reflect any increase in the cost of the Goods and/or Services to Hayley Windows that is due to:
 - (a) any factor beyond the control of Hayley Windows (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
 - (b) additional time needing to be spent due to the Customer failing to properly prepare and/or clear the Site for the supply of Services;
 - (c) scaffolding being required at the Site for the purpose of the Services;
 - (d) structural lintels being for the purpose of the Services;
 - (e) any request by the Customer to change the delivery/collection date(s), quantities or types of Goods ordered, or the Goods Specification; or
 - (f) any delay caused by any instructions of the Customer in respect of the Goods or failure of the Customer to give Hayley Windows adequate or accurate information or instructions in respect of the Goods.
- 10.5 If the Customer has ordered only Goods, the Customer will be required to pay 50% of the price of the Goods when Hayley Windows gives confirmation of Order pursuant to clause 2.3. The Customer will be required to pay the balance before collection.
- 10.6 If the Customer has ordered Goods and Installation Services, the Customer will be required to pay 50% of the price of the Goods and Installation Services when Hayley Windows provides the Customer with an installation date. The Customer will be required to pay the balance on the date the Installation Services are completed.
- 10.7 If the Customer has ordered only Repair Services, the Customer will be required to pay 50% of the price of the Repair Services when Hayley Windows gives confirmation of Order pursuant to clause 2.3. The Customer will be required to pay the balance on the date the Repair Services are completed.

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- 10.8 All payments due to Hayley Windows will be made to the bank account nominated in writing by Hayley Windows. Time for payment is of the essence.
- 10.9 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**) which the Customer will additionally be liable to pay to Hayley Windows at the prevailing rate, subject to the receipt of a valid VAT invoice.
- 10.10 If the Customer fails to make any payment due to Hayley Windows under the Contract by the due date for payment, then the Customer will pay interest on the overdue amount at the greater of 5% per annum above the Bank of England's base rate from time to time and the High Court judgment rate from time to time. Such interest will accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer will pay the interest together with the overdue amount.
- 10.11 All amounts due under the Contract will be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

11. Data Protection

Each party will, at its own expense, ensure that it complies with and assists the other party to comply with the requirements of all legislation and regulatory requirements in force from time to time relating to the use of personal data and the privacy of electronic communications, including (i) the Data Protection Act 2018 and any successor UK legislation, as well as (ii) the General Data Protection Regulation ((EU) 2016/679) and any other directly applicable European Union regulation relating to data protection and privacy (for so long as and to the extent that the law of the European Union has legal effect in the UK). Each party will ensure that it has all necessary consents and notices in place to enable the lawful transfer of personal data to the other for the purposes of each party fulfilling its obligations under the Contract. Neither party will use or disclose personal data provided to it by the other in connection with the Contract other than for the purpose of fulfilling the Contract.

12. Limitation of Liability

- 12.1 The restrictions on liability in this clause 12 apply to every liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 12.2 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:
 - 12.2.1 death or personal injury caused by negligence;
 - 12.2.2 fraud or fraudulent misrepresentation;
 - 12.2.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 12.3 Subject to clause 12.2, Hayley Windows' 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, will in no circumstances exceed the price of the Goods and/or Services ordered.
- 12.4 Subject to clause 12.2, the following types of loss are wholly excluded by Hayley Windows:
 - 12.4.1 loss of profits;
 - 12.4.2 loss of sales or business;
 - 12.4.3 loss of agreements or contracts;
 - 12.4.4 loss of anticipated savings;
 - 12.4.5 loss of use or corruption of software, data or information;
 - 12.4.6 loss of or damage to goodwill; and
 - 12.4.7 indirect or consequential loss.
- 12.5 Hayley Windows has given commitments as to compliance of the Goods and Services with relevant specifications in clauses 6 and 8. In view of these commitments, the terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 12.6 This clause 12 will survive termination of the Contract.

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- 12.7 Subject to clause 12.2, Hayley Windows will not be liable for:
 - 12.7.1 any failure of the Goods or Services to comply with the Contract; or
 - 12.7.2 for any damage caused by the Goods,
if the Goods are moved away from the location where they were originally installed by Hayley Windows.
- 12.8 If the property at the Site is rendered, Hayley Windows will, as part of the Services, "make good" the surface of the building with a mortar finish.
- 12.9 If the depth of the existing window frames at the Site are deeper than the new frames being installed, the Customer acknowledges and accepts that further decoration and/or plastering work may be required and that work will not be carried out by Hayley Windows.
- 12.10 Hayley Windows will use all reasonable endeavours to leave the Site clean and tidy following the supply of the Services.
- 12.11 Hayley Windows does not guarantee that the Customer's existing doors, windows and/or frames can be removed so as to be subsequently fit for re-use or any other purpose and Hayley Windows will remove them from the Site and dispose of them unless the Customer instructs Hayley Windows to leave them at the Site.
- 12.12 Hayley Windows does not claim or guarantee that any products it supplies eliminate or reduce the incidence of condensation.
- 12.13 If the property into which the Goods are to be installed is in a poor state for example, in terms of decoration, plastering or rendering, the Customer acknowledges and accepts that the Services may further disrupt such poor decoration, plastering or rendering (as the case may be) and Hayley Windows will not be responsible for any related damage to the Customer's property and will not "make good" any such damage.

13. Termination

- 13.1 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:
 - 13.1.1 the other party commits a material breach of its obligations under the Contract and (if such breach is remediable) fails to remedy that breach within 14 days after receipt of notice in writing to do so;
 - 13.1.2 the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
 - 13.1.3 the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
 - 13.1.4 the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 13.2 Without affecting any other right or remedy available to it, Hayley Windows may terminate the Contract with immediate effect by giving written notice to the Customer if:
 - 13.2.1 the Customer fails to pay any amount due under the Contract on the due date for payment; or
 - 13.2.2 there is a change of Control of the Customer.
- 13.3 Without affecting any other right or remedy available to it, Hayley Windows may suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Customer and Hayley Windows if the Customer fails to pay any amount due under the Contract on the due date for payment, the Customer becomes subject to any of the events

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listed in clauses 13.1.2 - 13.1.4, or Hayley Windows reasonably believes that the Customer is about to become subject to any of them.

14. Consequences of Termination

14.1 On termination or expiry of the Contract:

- 14.1.1 the Customer will immediately pay to Hayley Windows all of Hayley Windows' outstanding unpaid invoices and interest and, in respect of Services and Goods supplied but for which no invoice has been submitted, Hayley Windows will submit an invoice, which will be payable by the Customer immediately on receipt;
- 14.1.2 the Customer will return all Hayley Windows' Materials or Goods which have not been fully paid for. If the Customer fails to do so, then Hayley Windows may enter the Customer's premises (or the Site, as the case may be) and take possession of them. Until they have been returned, the Customer will be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract.

14.2 Termination or expiry of the Contract will not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

14.3 Any provision of the Contract that expressly or by implication is intended to have effect after termination or expiry will continue in full force and effect.

15. General

15.1 Dispute resolution.

15.1.1 An Expert is a person appointed in accordance with this clause 15.1.1 to resolve any disagreement between the parties as to whether the Goods and/or Services comply with the warranties at clause 6. Where under the Contract a party wishes to refer a matter to an Expert, the parties will first agree on the appointment of an independent Expert and agree with the Expert the terms of his appointment. If the parties are unable to agree on an Expert or the terms of the Expert's appointment within 7 days of either party serving details of a suggested expert on the other, either party will then be entitled to request the Glass and Glazing Federation to appoint a suitable and appropriate Expert with the required expertise. The Expert is required to prepare a written decision including reasons and give notice of the decision to the parties within a maximum of 3 months of the matter being referred to the Expert. If the Expert dies or becomes unwilling or incapable of acting, or does not deliver the decision within the time required, then either party may apply to the Glass and Glazing Federation to discharge the Expert and to appoint a replacement Expert with the required expertise and this clause 15.1.1 will apply to the new Expert as if they were the first Expert appointed. Each party will with reasonable promptness supply each other with all information and give each other access to all documents, personnel and things as the other party may reasonably require to make submissions to the Expert. The Expert will act as an expert and not as an arbitrator. The Expert will determine the matters referred to the Expert under the Contract. The Expert's written decision on the matters referred to the Expert will be final and binding on the parties in the absence of manifest error or fraud. All matters concerning the process and result of the determination by the Expert will be kept confidential among the parties and the Expert. Each party will act reasonably and co-operate to give effect to the provisions of this clause 15.1.1 and otherwise do nothing to hinder or prevent the Expert from reaching their determination. The Expert and the Glass and Glazing Federation will have no liability to the parties for any act or omission in relation to this appointment, save in the case of bad faith.

15.1.2 If any other dispute arises in connection with the Contract or these Conditions, the parties agree to follow The Glazing Arbitration Scheme operated by the Centre for Effective Dispute Resolution.

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- 15.1.3 For the avoidance of doubt, clause 15.1 will not prevent Hayley Windows from immediately initiating court proceedings to seek any interim relief (including injunctive relief) or take advantage of any applicable time limitation.
- 15.2 **Confidentiality.** Each party undertakes that it will not disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the group of companies to which the other party belongs, except as permitted by this clause 15.2. Each party may disclose the other party's confidential information (a) to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with the Contract and (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority. Each party will ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 15.2. No party will use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.
- 15.3 **Force Majeure.** Hayley Windows will not be in breach of the Contract nor liable for delay in performing or failure to perform, any of its obligations under the Contract if such delay or failure results from a Force Majeure Event. In such circumstances, Hayley Windows will be entitled to a reasonable extension of the time for performing such obligations.
- 15.4 **Assignment and other dealings.** Hayley Windows may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract. The Customer will not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of Hayley Windows.
- 15.5 **Notices.** Any notice or other communication given to a party under or in connection with the Contract will 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 15.5, and will be delivered personally, sent by pre-paid first class post or other next working day delivery service or commercial courier. A notice or other communication will be deemed to have been received: if delivered personally, when left at the address referred to in this clause 15.5; if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting and if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed. The provisions of this clause 15.5 will not apply to the service of any proceedings or other documents in any legal action.
- 15.6 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it will be deemed deleted, but that will not affect the validity and enforceability of the rest of the Contract. If any provision or part provision of the Contract is deemed deleted under this clause 15.6 the parties will negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the commercial result of the original provision.
- 15.7 **Waiver.** A waiver of any right or remedy under the Contract or by law is only effective if given in writing and will not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law will not constitute a waiver of that or any other right or remedy, nor will it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law will prevent or restrict the further exercise of that or any other right or remedy.
- 15.8 **No partnership or agency.** Nothing in the Contract is intended to, or will be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.

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- 15.9 **Entire agreement.** The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter. Each party acknowledges that in entering into the Contract it does not rely on, and will have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it will have no claim for innocent or negligent misrepresentation or negligent misrepresentation based on any statement in the Contract. Nothing in this clause 15.9 will limit or exclude any liability for fraud.
- 15.10 **Third party rights.** Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- 15.11 **Variation.** Except as set out in these Conditions, no variation of the Contract will be effective unless it is agreed in writing and signed by the parties (or their authorised representatives).
- 15.12 **Governing law and jurisdiction.** The Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation will be governed by and construed in accordance with the law of England and Wales. Each party irrevocably agrees that the courts of England and Wales will have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.