

Boyland Joinery

Terms and Conditions of Contract



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TERMS AND CONDITIONS OF CONTRACT

1. DEFINITIONS

"The Company" means Boyland Joinery Limited
"The Customer" means the Person, Firm or Company from where the Company accepts an order.
"The Works" means the work included or specifically described in the estimate and acceptance to be carried out by the Company.
"Accounts" means Invoice and or Application.

2. CONSTRUCTION

The Clause headings herein shall not affect the interpretation of these conditions.

3. SEVERABILITY

Any provisions of these conditions which in any way now, or subsequently, contravene the Law, shall be deemed severable and shall not affect any other provisions herein.

4. LEGAL

This Contract shall be subject to and shall be interpreted in accordance with the Law shall be of England and shall be subject to the jurisdiction of the English court only whereby and dispute shall be finally determined.

5. OFFER AND ACCEPTANCE

- 5.1 All estimates are made and all orders are accepted subject to these conditions. All other terms and conditions or warranties are excluded from the contract unless expressly agreed in writing by the Company.
- 5.2 No estimate submitted by the Company shall constitute a binding offer. No order placed upon the Company shall constitute a binding contract unless and until it has been expressly agreed in writing by the Company.
- 5.3 Acceptance of any order by the Company shall be subject to investigation of the Customer's credit status. The Company reserves the right to vary the payment terms under Clause 7 at any time on the basis of a revised credit opinion.
- 5.4 In placing an order the Customer is deemed to acknowledge that there is no inclusion in the Contract of any warranty, description, condition, statement or other representation contained in or arising from any prior correspondence, discussion, statements or technical literature unless expressly included in the estimate, order and written acceptance thereof.
- 5.5 Estimates will remain open for acceptance for a period of 90 days from the date thereof unless otherwise stated.
- 5.6 The Company may withdraw any estimate without penalty at any time up to its acceptance of an order.
- 5.7 The Company has the right to sub-contract any order or any parts of an order at its own discretion.

6. PRICES

- 6.1 Unless otherwise expressly stated in the estimate all prices quoted are based upon the costs of labour and materials and all other costs prevailing at the date of the estimate. The Company reserves the right to charge the Customer any increased costs incurred.
- 6.2 Prices quoted are subject to revision for errors and omissions at any time.
- 6.3 Prices quoted are exclusive of Value Added Tax which will be charged at the rate or rates applicable at the date of invoice.
- 6.4 Where estimates are based upon specification, drawings, quantities and other information provided by the Customer, they will be subject to re-measurement and the final account payable by the Customer shall be based upon the re-measured quantities. The Company reserves the right to adjust quoted prices in the event of significant variations to quantities.

7. PAYMENT

- 7.1 Unless otherwise expressly agreed in writing the Company shall present accounts to the Customer, which shall be paid in full within 30 days of the date of presentation.
- 7.2 Where provision is accepted for progress payment such accounts will be presented to the Customer by the Company at intervals not exceeding one month. The first account will be presented not later than one month following commencement on site or if so agreed of off site works. The final account will be presented immediately upon completion of the Works.
- 7.3 Accounts presented to the Customer by the Company shall comprise the total value of the works executed in accordance with this contract including all accepted variations, increased costs and other sums payable under any other provision of the contract and, in the case of progress payments all unfixed goods and materials delivered to the site for use in the works.
- 7.4 The Company retains absolute discretion regarding quantities and dates of material deliveries. If for any reason the purchaser does not accept delivery of the goods on the day agreed they shall be liable for aborted transportation costs and or arranged labour and warehouse handling costs and storage charges. We shall not be liable for depreciation, deterioration or damages howsoever caused by delay in delivery by us and will invoice the goods and seek payment as agreed in its terms.
- 7.5 In the event of default in payment by the Customer, the Company shall be entitled without prejudice to any other rights or remedies to suspend all further operations on the works under this or any other contract between the parties and to charge the Customer interest on any outstanding at the rate of 2% per calendar month. This interest to be calculated on a day-to-day basis and be immediately due to the Company.

8. TITLE TO GOODS

All goods and materials shall remain the property of the Company until the Company has received payment in full in accordance with accounts presented under clause 7. Notwithstanding that the goods and materials have been delivered to the site or that they have been incorporated in the Works the Company shall have the absolute right to recover such materials and goods where payment in full has not been received. In the event that the Customer purports to have sold the material and goods to a third party the proceeds of such sale shall be paid into a separate Bank Account and kept intact until payment in full has been received by the Company from the Customer. It is expressly agreed that the Company shall have the right to trace its title to the goods and materials into any such sub-sales. The Company may also require the Customer to assign the right to receive payment arising from such sub-sales.

9. BANKRUPTCY OF CUSTOMER

If the Customer commits an act of bankruptcy or makes an arrangement with his Creditors or being a Company enters into Liquidation, whether compulsory or voluntary (other than for the purpose of amalgamation or reconstruction) or a receiver or manager is appointed of all or part of its assets or undertakings or if he suffers any execution whether legal or equitable to be levied upon his property or obtained against him, then the Company may, without prejudice to any other rights or remedies by written notice forthwith determine this Contract and shall have the right to recover or to deduct from or set off against any such amount otherwise due under this or any other Contract the amount of damage suffered and loss and expense incurred by the Company by reason of such determination under this clause.

10. INFORMATION

- 10.1 The Company shall not be liable for the accuracy of any information provided by the Customer nor for any defects arising out of incorrect drawings, specification, calculations, quantities, dimensions or instructions etc. so provided. The costs of rectifying such defects will be charged to the Customer in accordance with Clause 13.
- 10.2 The Customer shall indemnify the Company from and against all actions which may arise due to the provision of the Works in accordance with information provided by the Customer where it is alleged that such information infringes a patent registered design, copyright or other exclusive right.
- 10.3 All drawings, specifications, calculations and other information supplied by the Company are supplied on the express understanding that copyright is reserved by the Company. Such information shall not be used by the Customer in any way except in connection with the Contract for which it is issued.

11. DRAWINGS

- 11.1 The Company shall provide drawings for Customer approval, following which an Acknowledgement of Order will be sent. Any Customer amendments following the Acknowledgement date will be chargeable.
- 11.2 All dimensions, datum, lines and other construction details illustrated on any drawings and sketches and any calculations provided by the Company shall be deemed to have been checked and accepted by the Customer for accuracy or discrepancy with all other drawn, written or site data. The Customer shall indemnify the Company from and against any defects and resultant actions or costs due to any such errors or discrepancies.

12. PROGRAMME

- 12.1 Programmes for execution of the Contract works will be agreed by the Company based upon information provided by the Customer, Suppliers, Manufacturers and others. The Customer shall have no right to damages or to cancel an order due to failure by the Company for any reason to meet programme dates.
- 12.2 Time of delivery is not the essence of the Contract.
- 12.3 Delivery will be to site, or nearest approach over hard road. The Customer shall provide all necessary labour and be responsible for unloading unless otherwise stated, and our liability for damage by mishandling, weather, humidity or otherwise shall cease upon delivery as aforesaid.
- 12.4 If the Company accepts variations to the Contract works under Clause 13 any previously agreed programme will be adjusted accordingly. Should the original Contract Programme period require extension due to variations the costs so incurred by the Company shall be charged to the Customer.
- 12.5 All goods supplied by the Company shall be inspected by the Customer immediately on receipt and they shall furnish to the Company particulars of any objections or claims for damages in writing within 7 days of the delivery, failing which the Customer shall have no remedy against the Company in respect of the goods delivered.
- 12.6 Work is to be carried out during normal working hours in a single continuous visit. The Customer will be charged with any costs incurred where for reasons beyond the control of the Company overtime or extra visits prove necessary.
- 12.7 The Customer shall provide the Company in writing with at least 15 working days notice to commence on site, or re-commence in the event of an interrupted operation.
- 12.8 If the Company accepts variations to the Contract works under Clause 13 any previously agreed programme will be adjusted accordingly. Should the original Contract Programme period require extension due to Variations, the costs so incurred by the Company shall be charged to the Customer.
- 12.9 If the commencement progress or completion of the Works is materially affected by any act, omission or default of the Customer, his servants or other sub-contractors, or his client, then any costs to be incurred by the Company will be charged to the Customer.

13. VARIATIONS

- 13.1 Variations by the Customer to the Contract Works will only be accepted by the Company if such variations are reasonable and do not change the nature of the Works.
- 13.2 No work shall be omitted by the Customer in the Contract if that omission is with the intention of placing the works with others.
- 13.3 Variations must be issued in writing by the Customer. If the Customer issues verbal instructions the Company may confirm receipt of them in writing to the Customer whereupon they will be deemed to constitute accepted variations to the Contract.
- 13.4 Variations will be priced, where it is reasonable to do so, on the basis of the Contract Price. If this is not reasonable they will be priced against daywork charges calculated in accordance with the "Definition of Price Cost of Daywork carried out under a Building Contract" (current edition Published by the R.I.C.S and B.E.C) with percentage additions as follows:

Labour +	200%
Materials +	25%
Plant +	20%

- 13.5 Where variations require significant additional drawing office work the Company reserves the right to charge the Customer with the resultant costs in addition to the valuation of variations under any other provision of the Contract.
- 13.6 If compliance with an accepted variation substantially changes the conditions under which any other work is executed then such other work shall be treated as if it had been the subject of a variation and shall be valued accordingly.
- 13.7 The Company reserves the right to review its products and to alter or improve the specification or dimensions of the components or materials used to substitute other components or materials of similar strength, specification, dimensions, or quality without prior notification.

14. COMPLETION

Guarantees and liability of defects will become effective from the delivery date of the product.

15. STATUTORY NOTICES

The Customer shall ensure that all Notices are given and all permissions sought and granted to satisfy the requirements of statutory bodies, local authorities, building regulations and the like. The Customer shall indemnify the Company from and against all action arising out of failure to comply with such requirements and shall be liable for any resultant costs incurred by the Company.

16. HEALTH AND SAFETY/FACTORIES ACTS ETC.

The Company will for its part comply with the requirements of the Factories Acts, Health and Safety at Work Acts and any other statutory regulations for the time being in force so far as they apply to the agreed scope of the Works. The Customer will for its part comply with these regulations so far as they apply to any provisions of this Contract.

17. LOSS, DAMAGE OR INJURY

- 17.1 The Customer shall be liable for the replacement cost of any materials, whether or not properly incorporated in the Works, that have been damaged, stolen, lost or destroyed by any persons or cause whatsoever other than by the Company or any of its employees.
- 17.2 Save where the Company is legally proved to have failed to exercise reasonable care in the performance of the Contract and such failure results in death or personal injury the Company shall not be liable in respect of claims arising by reason of death or personal injury in connection with this Contract.
- 17.3 Any liability for negligence or breach of statutory or legal duties by any of the Company's employees will only be accepted by the Company where such negligence or breach of duty is directly connected to the performance of the Contract.
- 17.4 Under no circumstances whatsoever shall the Company be liable for the consequential loss, loss of profits or damage to property.

18. DEFECTS LIABILITY AND GUARANTEES

- 18.1 Following the date as notified in Clause 14, the Company will honour the Guarantees offered for the Contract, provided that:
 - i) The Company agrees that such defects are due solely to faulty materials or workmanship by the Company.
 - ii) The Company manufactured the materials and goods involved.
 - iii) All payments applied for and due under Clause 3 have been received by the Company.
 - iv) The Product has been handled, stored, installed, glazed, decorated and maintained and cared for strictly in accordance with the product Care and Maintenance Instructions.
 - v) All claims against the Guarantees must be in writing and state our invoice or acknowledgement number and date.
- 18.2 Guarantees offered do not extend to joinery that has swollen due to excessive absorption of moisture, nor any faults arising from misuse, damage, neglect or unauthorised repair or modification on the part of the purchaser. Nor do they extend to the Customer's specific designs and specification requirements.
- 18.3 Where any materials not manufactured by the Company are installed by the Company in the Works the liability of the Company shall be limited to the installation of such materials which shall be deemed to have been specified by the Customer so that no warranties whatsoever as to their fitness for any purpose shall be given or implied by the Company. The Company will on request assign to the Customer such rights as it may have against the supplier and/or manufacturer.
- 18.4 Any defect not covered by our Guarantee must be notified within 1 month of delivery.
- 18.5 If in the unlikely event a complaint does arise, the Customer may request an inspection and written report. However if the complaint is found to be of the Customer's making an inspection fee may be charged.
- 18.6 Our liability shall be limited to the cost of any replacement component only or any rectification works that may be carried out by ourselves. All other liabilities whether contractual, tortious or otherwise are excluded, and neither shall we be responsible for any consequential cost arising from the failure of any component as scheduled above.

19. DISPUTES

- 19.1 In the event of any dispute or difference between the Customer and the Company including but not limited to manufacture and installation manufacture and supply only and contracts with a residential occupier or occupiers arising under the contract either party may refer the dispute of difference to adjudication.
- 19.2 The rules for any adjudication will be as set out in the Housing Grants Construction and Regeneration Act 1996: Part II Construction Contracts.
- 19.3 In the event of either Party to a dispute or difference being dissatisfied with the award of any adjudication previously made between the Parties may following compliance with any adjudicators award arising from that adjudication refer the dispute or difference to arbitration.
- 19.4 Where pursuant to Clause 19.3 either Party requires the dispute or difference to be referred to arbitration then that Party shall serve on the other Party a notice in writing of arbitration giving the other Party 14 days to concur in the appointment of an Arbitrator a person to be appointed on the request of either Party by the President for the time being of the Royal Institute of Chartered Surveyors.
- 19.5 Nothing stated herein shall prejudice any other rights and remedies available to the Company.

CONDITIONS SPECIFIC TO SUPPLY AND INSTALLATION OF JOINERY, UNLESS OTHERWISE STATED.

20. SCOPE OF THE WORKS

- The Scope of the Works shall be limited to the items included and specifically described in the estimate, order and variations accepted in writing by the Company under the provisions of this Contract, but the following operations are included in whole or part as deemed necessary by the Company.
- i) Site assembly of units.
 - ii) Offering units into prepared openings.
 - iii) Attaching lugs to frame.
 - iv) Attach straps as required.
 - v) Screwing frame or lugs to prepared fixings.
 - vi) Fix frame using straps or frame fixings.
 - vii) Glazing.
 - viii) Glaze as required.
 - ix) Filler foam to perimeter as required.
 - x) Where specified 28 x 6 plastic internal cover-trim.
 - xi) Where specified remove existing joinery.

21. ATTENDANCES

The following attendances will be provided by the Customer free of any charge to the Company as considered necessary by the Company for the completion of the Works within the agreed programme.

21.1 General Attendances

- i) Suitable clear access to site and working areas from agreed commencement date.
- ii) Storage of materials and plant in safe and secured covered store.
- iii) Use of welfare facilities and sanitary accommodation.
- iv) Use of plant for material movement to all areas, including hoisting where necessary, at time to suit agreed programme.
- v) Scaffolding and other equipment necessary for access and safety purposes to comply with current Health and Safety legislation. Scaffolding and the like to be suitable for the type of work and to be erected, moved, altered and re-erected as necessary.
- vi) Supply of electricity for lighting and power to required voltage (110v 15 amp unless otherwise advised) with socket outlets within 15 metres from each working face.
- vii) Clearance from workface of all rubbish arising from the Works.
- viii) Protection of all completed and uncompleted work from damage by preceding or following trades or any other occurrence beyond the control of the Company.

21.2 Special Attendances and Services

- i) Provision of datum levels at not more than 15 metres intervals and true grid lines on each floor.
- ii) Openings prepared by Customer to be accurate in size, detail, straightness, squareness and level to enable units to be fixed with a maximum 6mm clearance between units and surround.
- iii) Cleaning down finished work at practical completion.
- iv) Provision of electrical connections, spurs and wiring up where electrical components are specified.