

Swift Blinds & Curtains – B2B Terms and Conditions - 2009

TERMS AND CONDITIONS OF BUSINESS (MARCH 2009)

PART A – GENERAL TERMS AND CONDITIONS

1. DEFINITIONS & INTERPRETATION

1.1 In these terms and conditions, unless the context otherwise requires, the following expressions shall have the following meanings:

“**Contract**” means the contract between Swift and the Customer for the supply and purchase of Goods and Services, incorporating these terms and conditions;

“**Customer**” means the company, person or party detailed in the acknowledgement of order or Order Form;

“**Goods**” means any goods detailed in the Order Form;

“**Order Form**” means the document confirming details of the Contract whether electronic or otherwise;

“**Price**” means the price payable for the Goods or Services, detailed in the Order Form plus VAT at the prevailing rate unless VAT is explicitly included;

“**Sales Literature**” means all brochures, drawings, descriptive matter, specifications and websites used by Swift to advertise and promote the Goods or Services;

“**Services**” means any services relating to the fitting of Goods detailed in the Order Form and any other services Swift agrees to provide to the Customer;

“**Swift**” means Swift Blinds & Curtains Ltd Company Registration (Company Number No. 1190828) whose registered office is at 177 Lockwood Rd, Huddersfield HD1 3TG also trading as Swift Trade Blinds;

1.2 In these terms and conditions any reference to a statutory provision includes a reference to any modification or re-enactment of it from time to time; and headings are for ease of reference only and shall not affect the construction or interpretation.

2. CONTRACT FORMATION

2.1 Acceptance of the Customer's order and the completion of the Contract between Swift and Customer shall take place upon the happening of: (i) delivery of the Goods or the performance of Services; or (ii) Swift issuing an acknowledgement of order to the Customer; (iii) a purchase order or sales order which may or may not reference the Order Form; (iv) the parties course of dealing; or (v) signature or online completion of an Order Form.

3. SCOPE AND ENTIRE AGREEMENT

3.1 The specific details of each Contract, including without limitation those relating to what is being supplied and the Price and payment terms shall be recorded in a relevant Order Form.

3.2 Until further notice in accordance with condition 3.3, each Contract shall be governed by these terms and conditions.

3.3 No terms or conditions endorsed on, delivered with or contained in the Customer's purchase order, confirmation of order, specification or other document shall form part of the Contract simply as a result of such document being referred to in the Contract.

3.4 All Sales Literature is issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract which is not a sale by sample.

3.5 Any variation to these terms and conditions and any representations about the Goods shall have no effect unless expressly agreed in writing and signed by a director of Swift.

3.6 The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of Swift which is not set out in the Contract.

3.7 In addition to the terms and conditions of this Part A (which apply to any Contracts), if the Contract encompasses the supply of:

3.7.1 Goods, the additional terms and conditions set out in Part B of these terms and conditions shall also apply; and/or

3.7.2 Services, the additional terms and conditions set out in Part C of these terms and conditions shall also apply.

3.8 If there is any conflict between the provisions of this Part A and those of Parts B or C, the provisions of this Part A shall prevail.

4. PRICE AND PAYMENT

4.1 The price payable for the Goods or Services shall be the Price.

4.2 Every effort is made by Swift to ensure that the Price and the prices shown in the Sales Literature are accurate. Notwithstanding that the Contract has been formed, however, Swift shall have the right to terminate the Contract where the Goods have been sold at the incorrect Price. Swift will always give the Customer the option of reconfirming the Contract at the correct Price.

4.3 Swift shall issue invoices for payment of the price at the time of delivery of the Goods or performance of the Services.

4.4 If the Customer has been granted a credit account by Swift, the Customer shall pay the invoice within 30 days of receipt. Time for payment shall be of the essence.

4.5 If the Customer has not been granted a credit account by Swift, or elects to pay up front, condition 4.4 shall not be applicable in which case the Goods shall not be supplied or the Services performed unless and until the price specified in the Order Form has been paid for in full

4.6 No payment shall be deemed to have been received until Swift has received cleared funds.

4.7 The Customer shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Customer has a valid court order requiring an amount equal to such deduction to be paid by Swift to the Customer.

4.8 If the Customer fails to pay Swift any sum due pursuant to the Contract, the Customer shall be liable to pay interest to Swift on such sum from the due date for payment at the annual rate of 8% above the base lending rate from time to time of the Bank of England, accruing on a daily basis until payment is made, whether before or after any judgment. Swift reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.

4.9 No payment shall be deemed to have been received until Swift has received cleared funds.

5. QUALITY

5.1 Swift warrants that the Goods and Services shall on supply and for a period of twelve (12) months from the date of delivery be of satisfactory quality and reasonably fit for their intended purpose within the meaning of the Sale of Goods Act 1979 and Supply of Goods and Services Act 1982.

5.2 Swift shall not be liable for a breach of any of the warranty in condition 5.1 unless:

5.2.1 the Customer gives Swift written notice of the breach within seven (7) days of the date of: (i) delivery of the Goods or Services if the breach was obvious; or (ii) the date which it ought reasonably to have discovered the breach, if was not obvious (except in the circumstances set out in condition 2.2 of Part B where a further limitation applies); and

5.2.2 Swift is given a reasonable opportunity after receiving such notice to examine the Goods or Services, in which case the Customer (if asked to do so by Swift) shall return such Goods to Swift's place of business (at Swift's cost) for the examination to take place there.

5.3 Swift shall not be liable for a breach of any warranty in condition 5.1 if:

5.3.1 the Customer makes any further use of the Goods after giving such notice; or

5.3.2 the defect arises because the Customer failed to follow Swift's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice; or

5.3.3 the Customer alters/repairs the Goods without written consent of Swift.

5.4 Subject to conditions 5.2 and 5.3, if any of th

6.1.2 any use made or resale by the Customer of any Goods, or of any product incorporating any of the Goods;

6.1.3 any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.

6.2 Nothing in these conditions excludes or limits the liability of Swift:

6.2.1 for death or personal injury caused by Swift's negligence;

6.2.2 for any matter which it would be illegal for Swift to exclude or attempt to exclude its liability;

6.2.3 for fraud or fraudulent misrepresentation.

6.3 Subject to condition 6.2 and condition 6.3:

6.3.1 Swift's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to a sum of money equal to 110% of the Price;

6.3.2 Swift shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses.

6.4 The parties agree that the limitation of liability in this condition 6 is reasonable in all the circumstances, taking account of the availability of extra insurance to cover any other reasonably foreseeable liabilities.

6.5 Except as otherwise provided for under these terms and conditions, all other warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979 and section 2 of the Supply of Goods and Services Act 1982) are, to the fullest extent permitted by law, excluded from the Contract.

7. UNFORSEEABLE DELAYS

7.1 Swift reserves the right to defer the performance of the Contract (without liability to the Customer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of Swift including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials.

8. GENERAL

8.1 Swift may assign the Contract or any part of it to any third party. The Customer shall not be entitled to assign the Contract or any part of it without the prior written consent of Swift.

8.2 Each right or remedy of Swift under the Contract is without prejudice to any other right or remedy of Swift whether under the Contract or not.

8.3 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.

8.4 Failure or delay by Swift in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.

8.5 Any waiver by Swift of any breach of, or any default under, any provision of the Contract by the Customer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.

8.6 The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

8.7 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.

PART B – SUPPLY OF GOODS

1. RISK & RETENTION OF TITLE

1.1 The Goods are at the risk of Swift, until delivery, whereupon risk shall transfer in full to the Customer.

1.2 Full legal and beneficial title and ownership of the Goods shall pass to the Customer once Swift has received in full (in cash or cleared funds) the Price due to it in respect of the Contract

and all other sums which are or which become due to Swift from the Customer under any other contract or account.

1.3 Until title and ownership of the Goods has passed to the Customer, the Customer shall:

1.3.1 hold the Goods on a fiduciary basis as Swift's bailee;

1.3.2 store the Goods (at no cost to Swift) separately from all other Goods of the Customer or any third party in such a way that they remain readily identifiable as the property of Swift;

1.3.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and

1.3.4 maintain the Goods in satisfactory condition and keep them insured on Swift's behalf for their full price against all risks to the reasonable satisfaction of Swift. On request the Customer shall produce the policy of insurance to Swift.

1.4 The Customer's right to possession of the Goods shall terminate immediately if title and ownership of the Goods has not already passed in accordance with condition 1.2 and:

1.4.1 the Customer (being a person) has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors; or

1.4.2 the Customer (being a body corporate) shall have a receiver or administrative receiver appointed over it or over any part of its undertaking or assets or shall pass a resolution for winding-up (otherwise than for the purpose of a bona fide scheme of solvent amalgamation or reconstruction) or shall become subject to an administration order or shall enter into any voluntary arrangement with its creditors or shall cease or threaten to cease to carry on business.

1.5 Swift shall be entitled to recover payment of the Price, notwithstanding that legal and beneficial ownership and title of the Goods has not passed to the Customer.

1.6 The Customer grants Swift, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Customer's right to possession has terminated, to recover them.

2. DELIVERY

2.1 Unless otherwise agreed in writing, delivery of the Goods shall be made to the address specified in the Order Form.

2.2 Dates specified by Swift for delivery of Goods are intended to be an estimate and time for delivery shall not be made of the essence by notice. If no dates are so specified, delivery shall be within a reasonable time.

2.3 If delivery is made at the premises of Swift (ex works), the Customer shall take delivery of the Goods within two (2) days of Swift giving it notice that the Goods are ready for delivery.

2.4 If for any reason the Customer fails to accept delivery of any of the Goods when they are ready for delivery, or Swift is unable to deliver the Goods on time because the Customer has not provided appropriate instructions, documents, licences or authorisations:

2.4.1 risk in the Goods shall pass to the Customer (including for loss or damage caused by Swift's negligence);

2.4.2 the Goods shall be deemed to have been delivered; and

2.4.3 Swift may store the Goods until delivery, whereupon the Customer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).

2.5 If Swift is requested to re-deliver the Goods following a failed delivery in accordance with condition 2.4, Swift reserves the right to make an additional charge for such re-delivery.

2.6 Swift may deliver the Goods by separate instalments. Each separate instalment shall be a separate Contract and no cancellation or termination of any one Contract relating to an instalment shall entitle the Customer to repudiate or cancel any other Contract or instalment.

2.7 The Customer shall be required to notify Swift of any delivery shortages or damage to the Goods within forty eight (48) hours of delivery. If the Customer fails to notify Swift of any such shortages or damage within this time scale, the Customer shall be deemed to have accepted delivery of all the Goods.

PART C - SUPPLY OF SERVICES

1. COMMENCEMENT AND DURATION

1.1 The Services supplied under the Contract shall be provided by Swift to the Customer from the date specified in the Order Form.

1.2 The Services supplied under the Contract shall continue to be supplied until they have been performed in accordance with the Order Form unless the Contract is terminated in accordance with these terms and conditions.

1.3 Once the Order Form has been agreed no amendment shall be made to it except in accordance with condition 4.

2. SWIFT'S OBLIGATIONS

2.1 Swift shall use reasonable endeavours to:

2.1.1 provide the Services in accordance in all material respects with the Order Form but any dates shall be estimates only and time shall not be of the essence of the Contract.

2.1.2 observe all health and safety rules and regulations and any other reasonable security requirements that apply at the Customer's premises that have been communicated to it under condition 3.1.4, provided that it shall not be liable under the Contract if, as a result of such observation, it is in breach of any of its obligations under the Contract.

3. CUSTOMER'S OBLIGATIONS

3.1 The Customer shall:

3.1.1 co-operate with Swift in all matters relating to the Services;

3.1.2 provide, for Swift, its agents, sub-contractors and employees, in a timely manner and at no charge, access to the point of delivery of the Services and other facilities as requested by Swift;

3.1.3 be responsible (at its own cost) for preparing and maintaining the relevant premises for the supply of the Services; and

3.1.4 inform Swift of all health and safety dangers peculiar to the site, rules and regulations and any other reasonable security requirements that apply at the point of delivery of the Services.

3.2 If Swift's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Customer, its agents, sub-contractors or employees, Swift shall not be liable for any costs, charges or losses sustained or incurred by the Customer arising directly or indirectly from such prevention or delay.

3.3 The Customer shall be liable to pay to Swift, on demand, all reasonable costs, charges or losses sustained or incurred by Swift (including any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property and those arising from injury to or death of any person and loss of opportunity to deploy resources elsewhere) arising directly or indirectly from the Customer's fraud, negligence, failure to perform or delay in the performance of any of its obligations under the Contract, subject to Swift confirming such costs, charges and losses to the Customer in writing.

4. CHANGE CONTROL

4.1 If the Customer requests a change to the scope or execution of the Services, Swift shall, within a reasonable time, provide a written estimate to the Customer of:

4.1.1 the likely time required to implement the change;

4.1.2 any variations to Swift's charges arising from the change; and

4.1.3 any other impact of the change on the terms of the Contract.

4.2 Swift may, from time to time and without notice, change the Services in order to comply with any applicable safety or statutory requirements, provided that such changes do not materially affect the nature, scope of, or the charges for the Services.

4.3 If the Customer wishes Swift to proceed with the change, Swift has no obligation to do so unless and until the parties have agreed in writing on the necessary variations to its charges, the Order Form and any other relevant terms of the Contract to take account of the change.