

Please read these terms and conditions of trade (“**Terms**”) carefully.

By submitting a credit account application, accepting any quote (whether by signing it, or providing any other form of written or electronic acceptance) and/or ordering Goods and Services, the Client agrees that these Terms will apply to the supply of all Goods and Services and to any quote given by or on behalf of the Company, except to the extent they are expressly varied by agreement in writing between the Client and the Company, or updated by the Company in accordance with clause 21.4.

These Terms replace any previous agreements, arrangements or understandings relating to the supply of Goods and Services and any terms and conditions contained in any document used by the Client.

1. Definitions

- 1.1 “Company” means NK Windows Limited T/A NK Windows its successors and assigns or any person acting on behalf of and with the authority of NK Windows Limited.
- 1.2 “Client” means the person(s) or entity buying the Goods and Services as specified in any invoice, document or order, and if there is more than one Client is a reference to each Client jointly and severally.
- 1.3 “Goods” means all goods supplied by the Company to the Client.
- 1.4 “GST” means goods and services tax.
- 1.5 “Price” means the Price payable for the Goods as agreed between the Company and the Client in accordance with clause 5 below.
- 1.6 “Services” means all services supplied by the Company to the Client.

2. Application

- 2.1 The Client warrants that it has the power to enter into these Terms and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that these Terms create binding and valid legal obligations on it.
- 2.2 A contract is created and the Client is bound to pay the applicable amounts when the Company accepts a Client’s order in writing. Subject to clause 7.4, each accepted order will be a separate contract. A quote does not create a binding contract until the Client places an order which is then accepted by the Company.
- 2.3 The Company may decline any order for Goods and Services in its sole discretion.

3. Change in Control

- 3.1 The Client must give the Company not less than fourteen (14) days’ prior written notice of any proposed change of ownership of the Client and/or any other change in the Client’s details (including but not limited to, changes in the Client’s name, address, contact details, or business practice). The Client will be liable for any loss incurred by the Company as a result of the Client’s failure to comply with this clause.

4. Authorised Representatives

- 4.1 The Client agrees that any third party introduced to the Company as the Client’s duly authorised representative in writing will have the full authority of the Client to order and request any variation to Goods and Services on the Client’s behalf (such authority to continue until all requested Goods and Services have been provided or the Client otherwise notifies the Company in writing that said

person is no longer the Client’s duly authorised representative).

- 4.2 The Client will be solely liable to the Company for all losses and additional costs incurred by the Company (including loss of profit) in providing any Goods and Services, or variation(s) requested by the Client’s duly authorised representative, except where such losses or costs are caused by the Company.

5. Price and Payment

- 5.1 At the Company’s sole discretion, the Price will be either:
 - (a) as indicated on any invoice provided by the Company to the Client; or
 - (b) the Company’s quoted price (subject to clause 5.2) which will be valid for the period stated in the quote or otherwise for a period of thirty (30) days.
- 5.2 The Company reserves the right to change the Price:
 - (a) if a variation to the Goods or Services is requested (including any applicable plans or specifications);
 - (b) where additional Services are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, poor weather conditions, limitations to accessing the site, safety considerations, prerequisite work by any third party not being completed, inaccurate structural measurements provided by the Client, iron reinforcing rods in concrete, or hidden pipes and wiring in walls etc) which are only discovered on commencement of the Services; or
 - (c) in the event of increases to the Company in the cost of labour or Goods which are beyond the Company’s control.
- 5.3 At the Company’s sole discretion, a non-refundable deposit may be required in accordance with the Company’s payment schedule notified to the Client.
- 5.4 Unless the Company has agreed in writing to extent credit to the Client, time for payment for the Goods and Services being of the essence, the Price will be payable by the Client by way of instalments/progress payments in accordance with the Company’s payment schedule or the date specified on the invoice or form as being the payment due date.
- 5.5 Payment may be made by cash, electronic banking, or by any other method agreed between the parties.
- 5.6 Payment must be made in cleared funds. The Client is not entitled to withhold payment or make

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- any set off or deduction from the Price of Goods or Services supplied, or from any other payment due by the Client whatsoever.
- 5.7 Unless otherwise stated, the Price does not include GST. In addition to the Price the Client must pay to the Company an amount equal to any GST the Company must pay for any supply by the Company under this or any other agreement for the Goods and Services. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition, the Client must pay any other applicable taxes and duties except where they are expressly included in the Price.
- 6. Credit account terms**
- 6.1 This clause 6 applies when the Company has agreed in writing to extend credit to the Client.
- 6.2 The Company may set a credit limit on the Client's credit account and can change this credit limit and withdraw, suspend or alter the Client's credit account at any time with at least fourteen (14) days' prior written notice. If the credit limit is exceeded, the Company may refuse to supply Goods to the Client.
- 6.3 Any changes to the Client's credit account do not release the Client or any guarantor of the Client's obligations under these Terms from any liability whatsoever.
- 7. Delivery of Goods**
- 7.1 Delivery of the Goods ("**Delivery**") occurs when:
- the Client or the Client's nominated carrier takes possession of the Goods at the Company's address; or
 - the Company (or the Company's nominated carrier) delivers the Goods to the Client's nominated address even if the Client is not present.
- 7.2 All Prices exclude the cost of Delivery unless expressly included. The cost of Delivery may be invoiced to the Client and is payable on the date specified on the invoice.
- 7.3 The Client must take Delivery by receipt or collection of the Goods whenever they are tendered for Delivery. If the Client is unable to take Delivery as arranged, the Company may charge a reasonable fee for redelivery and/or storage.
- 7.4 The Company may Deliver the Goods in separate instalments, each treated as a separate contract under these Terms. Each instalment will be invoiced and paid for according to these Terms. Failure to fully deliver any instalment does not entitle the Client to cancel any contract for other instalments.
- 7.5 Any time or date given by the Company to the Client is an estimate only and not a condition of supply. The Company will use reasonable endeavours to meet agreed timeframes but is not be liable for any loss or damage due to delays. Delays do not entitle the Client to cancel any order, or refuse any Delivery.
- 8. Risk**
- 8.1 Risk of damage to, or loss of, the Goods passes to the Client on Delivery and the Client must insure the Goods on or before Delivery.
- 8.2 If any of the Goods are damaged or destroyed after Delivery but before ownership passes to the Client, the Company is entitled to all insurance proceeds for the Goods. Presenting these Terms is sufficient evidence of the Company's rights to the insurance proceeds without the need for any person dealing with the Company to make further enquiries.
- 8.3 If the Client requests the Company to leave Goods outside the Company's premises for collection or to deliver to an unattended location, the Goods will be left at the Client's sole risk.
- 8.4 If the Company provides Goods on a 'supply-only' basis, the Company is not liable for installing the Goods. It is the Client's sole responsibility to follow the manufacturer's installation instructions.
- 8.5 If the Company is required to install the Goods, the Client warrants that the premises or equipment where the Goods are to be installed or erected is sound and will sustain the installation and work incidental thereto. The Company is not liable for any claims, demands, losses, damages, costs and expenses howsoever caused or arising if the premises or equipment cannot accommodate the installation.
- 9. Compliance with Laws**
- 9.1 Each party must comply with all applicable statutes, regulations and bylaws of government, local and other public authorities related to the Goods and Services.
- 9.2 The Client must obtain, at their own expense, all licenses and approvals required for the Services.
- 9.3 The Client agrees that the site will comply with all occupational health and safety laws relating to building/construction sites and any other relevant safety standards or legislation.
- 9.4 The Client acknowledges and agrees that these Terms are subject to the Construction Contracts Act 2002 (**Construction Act**) and the Company can enforce its rights under the Construction Act.
- 10. Dimensions, Plans and Specifications**
- 10.1 All customary building industry tolerances will apply to the dimensions and measurements of the Goods unless otherwise agreed in writing by the Company and the Client.
- 10.2 The Company is entitled to rely on the accuracy of any plans, specifications, measurements and other information provided by the Client ("**Client Information**"). While the Company takes every care to follow the Client's instructions, it is the Client's responsibility to verify the accuracy of the Client Information, before placing an order, or the Company accepting the order, based on the Client Information. The Company will not be liable for any errors in the Client Information.
- 10.3 If the supply of Goods or Services involves the Company estimating measurements and quantities, the Client is responsible for verifying the accuracy of these estimates before placing an order or accepting the order based on such estimates.

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10.4 If the Client requires any changes to the Company's estimated measurements and quantities, the Client must request such changes in writing before placing an order or accepting a quote.

11. Client's Responsibilities

11.1 If the Company is required to install the Goods the Client is responsible for:

- (a) making the premises available on the agreed date and time. If installation is interrupted due to the Client not adhering to the agreed installation schedule, any additional costs will be invoiced to the Client;
- (b) ensuring all areas are clean and clear to enable the Services to be completed in accordance with the installation schedule. The Company is not liable for any loss or damage to the site (including, but not limited to, damage to pathways, driveways and concreted, paved or grassed areas) unless caused by the Company's negligent, unlawful or fraudulent act, omission or default;
- (c) supplying power to within 8 metres of the work site;
- (d) fully disclosing any information that may affect the Company's installation procedures; and
- (e) providing and erecting scaffolding or similar structures, if deemed necessary by the Company, unless otherwise agreed. All scaffolding must comply with industry safety standards, and any person erecting it must be suitably qualified to ensure its safe and proper erection and hold a current certificate of competency and/or be fully licensed, if required.

12. Title

12.1 Title to and ownership of the Goods will not pass to the Client until the Client has:

- (a) paid the Company all amounts owed; and
- (b) met all other obligations to the Company.

12.2 Receipt of any form of payment other than cash will not be considered payment until it has been honoured, cleared or recognised.

12.3 Until ownership of the Goods passes to the Client in accordance with clause 12.1, the Client will:

- (a) hold the Goods and all proceeds on trust in a fiduciary capacity for the Company as bailee;
- (b) store and keep the Goods separately and in a way which clearly identifies the Goods as the sole property of the Supplier;
- (c) insure the Goods for their full replacement value;
- (d) only use sell, dispose of, or part with possession of the Goods in the ordinary course of the Client's business and for market value;
- (e) not do or allow anything that might reduce the value of the Goods or adversely affect the Company's security in the Goods; and

(f) if the Goods are attached, fixed, or incorporated into any property by way of any manufacturing or assembly process by the Company, Client or any third party, ensure that title in the Goods shall remain with the Company. Where the Goods are mixed with other property or materials so as to lose their separate identity, title to and ownership of such new goods is deemed to be assigned to and will vest immediately in the Company as security for any amount owing by the Client to the Company

12.4 The Client irrevocably authorises the Company, or its agent to without prior notice enter any premises owned, occupied or used by the Client, or any premises where the Company believes the Goods are kept and recover possession of the Goods or any materials, including removing the Goods if the Goods are attached, fixed, or incorporated into the premises, if the Client defaults on any payments due to the Company. The Company may resell the Goods or retain the Goods without incurring any liability to any person

13. Personal Property Securities Act 1999 ("PPSA")

13.1 The Client acknowledges and agrees that:

- (a) these Terms constitute a security agreement for the purposes of the PPSA; and
- (b) a security interest is taken in all Goods previously supplied by the Company to the Client (if any) and all Goods that will be supplied in the future by the Company to the Client, and their proceeds.

13.2 The Company may apply any payments received from or on behalf of the Client to reduce the Client's indebtedness as the Company sees fit, including in a manner that preserves any purchase money security interest in the Goods described in clause 13.1(b).

13.3 The Client undertakes to:

- (a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Company may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
- (b) indemnify, and upon demand reimburse, the Company for all expenses incurred or payable by the Company in relation to registering, maintaining, or releasing a financing statement on the Personal Property Securities Register in respect of each of the Goods, and/or enforcing or attempting to enforce the security interest created by these Terms;
- (c) not register a financing change statement or a change demand without the prior written consent of the Company; and
- (d) immediately advise the Company of:
 - (i) any proposed change to the Client's name or any other change in the Client's details (including without limitation a change to the Client's

- place of business, or email address); or
- (ii) any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales; and
 - (e) not allow security interests to be created or registered over the Goods in priority to the security interest(s) held by the Company.
- 13.4 The Company and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA will apply to these Terms.
- 13.5 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129 and 131 of the PPSA.
- 13.6 Unless otherwise agreed in writing by the Company, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 13.7 The Client will unconditionally ratify any actions taken by the Company under clauses 13.1 to 13.6.

14. Damaged or Defective Goods

- 14.1 The Client must inspect the Goods on Delivery and notify the Company within seven (7) days of Delivery (time being of the essence) of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client must allow the Company a reasonable opportunity to inspect the Goods if the Client believes the Goods are defective in any way. If the Client does not comply with these provisions, the Goods will be presumed to be free from any defect or damage.
- 14.2 The Client cannot reject any Goods which are defective due to any measurements, drawings, designs, or instructions provided by the Client. For defective Goods that the Company agrees in writing the Client is entitled to reject, the Company's liability is limited to either (at the Company's discretion) replacing or repairing the Goods.

15. Returns

- 15.1 Returns will only be accepted if:
- (a) the Client has complied with the provisions of clause 14.1;
 - (b) the Company has agreed in writing to accept the return of the Goods;
 - (c) the Goods are returned within ten (10) days of the Delivery date;
 - (d) the Goods have been stored or used properly; and
 - (e) the Goods are returned in the condition they were delivered, with all packaging material, brochures and instructions, in as new condition as is reasonably possible.
- 15.2 If the Company allows the Client to return Goods that are not defective or non-compliant, the Company reserves the right to charge a return fee in addition to any delivery costs.
- 15.3 To the maximum extent permitted by law, non-stocklist items or Goods made to the Client's specifications are not accepted for credit or return.

16. Service Defects

- 16.1 Subject to the warranty conditions set out in clause 16.2, the Company warrants that if any defect in the Services becomes apparent and is reported to the Company within:
- (a) twelve (12) months from the date of completion of the Services for residential Clients; or
 - (b) three (3) months from the date of completion of the Services for commercial Clients,
- the Company will either (at the Company's sole discretion) replace the Goods or remedy the Services.
- 16.2 The warranty conditions are:
- (a) the warranty does not cover defect or damage caused or partly caused by:
 - (i) the Client's failure to properly maintain the Goods, or follow the Company's instructions or guidelines; or
 - (ii) using the Goods for purposes other than those specified in a quote or order form; or
 - (iii) continued use of the Goods after a defect becomes apparent or should have been apparent to a reasonably prudent operator or user;
 - (iv) fair wear and tear;
 - (v) measurements, drawings, designs, or instructions provided by the Client; or
 - (vi) any accident, act of God, or other event beyond the reasonable control of either party.
 - (b) the warranty will cease and the Company will thereafter in no circumstances be liable under the terms of the warranty if the Services are repaired, altered or overhauled without the Company's consent.
 - (c) in respect of all claims the Company will not be liable for any delay in replacing or remedying the workmanship or in assessing the Client's claim.

17. Intellectual Property

- 17.1 In providing the Goods and Services, the Client authorises the Company to take photographs of the Client's premises (either partially or completely finished). The copyright in such photographs remains the property of the Company
- 17.2 When the Company designs, draws or develops Goods for the Client, the copyright in any designs, drawings, images, photographs and documents remains the property of the Company.
- 17.3 The Client warrants that all designs, specifications or instructions provided to the Company will not cause the Company to infringe any patent, registered design or trademark in executing the Client's order. The Client agrees to indemnify the Company against any action taken by a third party regarding such infringement.
- 17.4 The Client agrees that the Company may use, at no cost, any documents, designs, drawings, or images the Company has created for the Client,

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and any photographs the Client has taken of the Goods including photographs of the Goods in the Client's premises.

18. Default and Consequences of Default

18.1 To the maximum extent permitted by law, the Company will not be liable to the Client or to any other person, whether in contract, tort (including negligence), equity, or on any other basis under or in connection with these Terms (including any contract incorporating these Terms) for any:

- (a) indirect or consequential loss, or special or exemplary damages;
- (b) loss of income, profits, savings or goodwill; or
- (c) any other costs (including legal and solicitor/client costs).

18.2 To the maximum extent permitted by law, in the event that the Company's liability cannot be excluded under applicable law, the total liability of the Company for any loss arising from any defect or non-compliance of the Goods and/or Services or any other breach by the Company of its obligations under these Terms will not in any circumstances exceed the Price charged by the Company for the Goods and/or Services.

18.3 Interest on overdue invoices will accrue daily from the due date until the date of payment, at a rate of 2.5% per calendar month (and such interest will compound monthly at such a rate) both before and after any judgment.

18.4 Without prejudice to any other remedies the Company may have, if the Client breaches any obligation (including those relating to payment) under these Terms, the Company may suspend or terminate the supply of Goods. The Company will not be liable for any loss or damage the Client suffers due to the Company exercising its rights under this clause.

18.5 Without prejudice to the Company's other legal remedies, the Company may cancel all or any part of any unfilled order, and all amounts owing will, whether or not due for payment, become immediately payable if:

- (a) any money payable to the Company becomes overdue, or in the Company's opinion the Client will be unable to make a payment when due;
- (b) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
- (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

19. Cancellation

19.1 The Company may cancel any order for Goods at any time before Delivery by giving written notice to the Client. On giving such notice, the Company will refund any money prepaid by the Client for the Goods. The Company is not liable for any loss or damage arising from such cancellation.

19.2 If the Client cancels the Delivery of Goods, the Client is liable for any loss incurred (whether

direct or indirect) by the Company as a direct result of the cancellation (including, but not limited to, any loss of profits).

19.3 Orders for Goods made to the Client's specifications or for non-stocklist items, cannot be cancelled by the Client once production has commenced, or an order has been accepted.

20. Privacy Act 2020

20.1 The Client authorises the Company or its agent to:

- (a) access, collect, retain, use and disclose any personal information provided to, obtained by or retained by the Company in connection with these Terms, including any overdue fines balance information held by the Ministry of Justice, for the purpose of:
 - (i) providing Goods and Services to the Client;
 - (ii) assessing the Client's creditworthiness;
 - (iii) debt recovery and enforcing its rights under these Terms;
 - (iv) registering a security interest on the Personal Properties Securities Register;
 - (v) marketing products and services to the Client, including sending promotional emails or newsletters; or
 - (vi) enabling search engine optimisation (SEO).
- (b) disclose information about the Client, whether collected directly from the Client by the Company or obtained from any other source, to any other credit provider or credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Client.

20.2 Any individual to whom personal information relates can request access to and/or correction of its personal information held by the Company.

20.3 If the Client does not provide the information requested by the Company, the Company may be unable to supply Goods to the Client under these Terms.

21. General

21.1 The Company's failure to enforce any provision of these Terms does not constitute a waiver of that provision, nor does it affect the Company's right to enforce it later. If any provision of these Terms is found to be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions will not be affected, prejudiced or impaired.

21.2 These Terms and any contract to which they apply are governed by the laws of New Zealand and are subject to the exclusive jurisdiction of the courts of New Zealand.

21.3 The Company may license or sub-contract all or any of its rights and obligations without the Client's consent.

21.4 The Client agrees that the Company may amend these Terms at any time by publishing the varied Terms on its website [<https://nkwindows.co.nz/about-nk/>]. Any changes

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will take effect from the date the Company notifies the Client of such change. Goods ordered after such notification will be subject to the amended Terms and the Client will be taken to have accepted the changes by making further request for Goods.

- 21.5 Neither party is liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.