

Zakuna Limited - Terms & Conditions of Sale

1. Interpretation

- 1.1 The definitions in this clause apply to these Terms:
Business Day: a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business;
Estimated Delivery Date: the date upon which we will aim to deliver the Goods and provide the Installation Services (where applicable)
Deposit: an amount equivalent to 25% (twenty five percent) of the Price; or an otherwise agreed amount in writing;
Goods: the products that we are selling to you as set out in the Order;
Installation Services: the installation services as detailed in the Order, which you agree to purchase from us;
Order: your order for the Goods and Installation Services, to include (where applicable) the description of the Goods, Installation Services, Specification, Price, Property and Estimated Delivery Date (or any other information which we deem necessary);
Order Acceptance: your written acceptance of the Order, prior to Survey (at survey if the dimensions are different the price is subject to change).
Order Confirmation: your written acceptance of the Order; post Survey.
Price: the price of the Goods and Installation Services, as set out in the Order, which is subject to Survey (where applicable);
Property: the property in respect of which the Goods and Installation Services are to be provided;
Quotation: the quotation provided by us to include, where applicable, the description of the Goods, Installation Services, Specification, Price, Property and Estimated Delivery Date (or any other information which we deem necessary), as set out overleaf;
Specification: the specification for the Goods, including any samples, drawings, illustrations contained in our website, catalogues or brochures and related plans that are agreed in writing by you and us, as set out in the Quotation and Order;
Survey: a survey carried out on such part of the Property at which the Goods and Installation Services are to be provided;
Survey Fee: the reasonable costs incurred by us in relation to the Survey;
Terms: the terms and conditions set out in this document and any special or additional terms and conditions agreed in writing by us and you recorded overleaf;
VAT: value added tax;
Warranty: the warranty given by the product manufacturer that will apply to the Goods sold by us from time to time;
We, us or our: Zakuna Limited, a company registered in England and Wales with company number 10422417, whose registered address is 30-34 North Street, Hailsham, BN27 1DW and
You or your: the customer ordering the Goods and Installation Services from us, as detailed in the Order.
- 1.2 Headings do not affect the interpretation of these Terms.
- 1.3 A reference to “writing” or “written” in these Terms includes email but excludes fax.

- 1.4 Any phrase introduced by the terms “including”, “include”, “in particular” or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

2. These Terms

- 2.1 These Terms and the Warranty are the terms and conditions on which we supply the Goods and Installation Services to you.
- 2.2 Please ensure that you read these Terms carefully, and check that the details on the Quotation and Order are complete and accurate, before you sign and submit the Order to us. If you think that there is a mistake, please contact us to discuss. Any changes required to a Quotation or Order submitted to us must be agreed by us in writing.
- 2.3 We intend to rely on these Terms and your Order. If you require any changes, please make sure you ask for them to be put in writing. This can help to avoid any problems about what you expect from us and what we expect from you.
- 2.4 These Terms will apply to any repaired or replacement Goods we supply to you.

3. Order process and our contract with you

- 3.1 Any Quotation shall be valid for 30 (thirty) days only from the date of the Quotation. If an Order Acceptance is not signed and returned to us within this time period, the Quotation shall lapse and cease to have effect.
- 3.2 The Quotation is an offer by us to enter into a binding contract, which you are free to accept or decline at your absolute discretion.
- 3.3 These Terms shall become binding on you and us when you sign your Order Acceptance, at which point a contract shall come into existence between us.

4. Specification

- 4.1 The Goods are described in the Specification.
- 4.2 Any samples, drawings, or advertising we issue, and any illustrations contained in our catalogues or brochures or on our website, are produced solely to provide you with an approximate idea of the goods they describe. The Goods will be manufactured according to the Specification, subject to clauses 4.3 and 4.4. Although we have made every effort to display the colours accurately, we cannot guarantee that the printed pictures contained in our catalogues or brochures accurately reflects the colour of the Goods. The Goods may vary slightly from those images.
- 4.3 All specifications are approximate only and are subject to normal margins of tolerance for the materials and installation in question.
- 4.4 We reserve the right to amend the Specification if required by any applicable statutory or regulatory requirements.

5. Your rights to make changes

- If you wish to make a change to the Goods ordered please contact us. We will let you know if the change is possible. If it is possible we will let you know about any changes to the Price, the Estimated Delivery Date or anything else which would be necessary as a result of your requested change and you shall confirm to us whether you wish to go ahead with the change.

- 6. Our rights to make changes**
- 6.1 Minor changes to the Goods.** We may change the Goods:
- (a) to reflect changes in relevant laws and regulatory requirements; and
 - (b) to implement technical adjustments and improvements.
- These changes will not adversely affect your use of the Goods.
- 6.2 More significant changes to the Goods.** If we need to make more significant changes to the Specification (for example changes not foreseen or made aware to you in the pre-contract information provided) or, following a Survey (where applicable), any changes to the Price, we will notify you and you may then contact us within 14 days of the date of such notice to either agree to such changes or end the contract and receive a full refund or any monies paid to us in accordance with clause 11.3 or clause 11.4, subject to us deducting the Survey Fee. If you do not contact us within 14 days from the date of our notice to you, we will end the contract and refund to you any monies paid to us in accordance with clause 11.3 or clause 11.4, , subject to us deducting the Survey Fee.
- 6.3 Changes to these Terms.** We reserve the right to revise and amend these Terms from time to time. You will be subject to the Terms in force at the date of the Order.
- 7. Delivery**
- 7.1** Any delivery costs will be in addition to the Price and set out in the Quotation.
- 7.2** Delivery charges are set at our entire discretion and vary depending on the postal code of the delivery location, the weight of the Goods, the day of delivery, sizes of packaging and type of delivery vehicle required.
- 7.3** Delivery of Goods only shall be completed when you (or an authorised person on your behalf) accept delivery of the Goods at the Property or when you (or an authorised person on your behalf) have collected the Goods from our premises.
- 7.4** Delivery of Goods only will be kerbside. If there are access problems such as:
- (a) weight or height restrictions;
 - (b) steep gradients, uneven or loose surfaces;
 - (c) access restriction for large delivery vehicles;
 - (d) low bridges or overhanging trees or cables; or
 - (e) waiting time restrictions,
- we must be informed when you place an Order
- if any of the above mentioned access issues apply so that an alternative location for delivery of the Goods (such alternative address to be the nearest easily accessible and safe access point for the address stated) can be agreed upon by us and you.
- 7.5** You shall inform us if any of the Goods are not the Goods set out in the Order or are damaged upon delivery. This must be done immediately after delivery whilst the delivery driver is still on site or at our premises. If the Goods are delivered to you, the delivery note provided by the haulage contractor must be marked 'damaged' or 'incorrect Goods', as failure to do this will waive your rights and any additional delivery costs will be charged.

- 7.6** In all circumstances, including where Installation Services are provided, you (or your authorised representative) will need to be present at the Property and have suitable equipment to unload the Goods from our delivery vehicle on the specified date of delivery, unless alternative arrangements are agreed by us in writing prior to delivery. If no one is present at the time of delivery, or you do not have suitable equipment or an appropriate number of people to unload the Goods from our delivery vehicle, the Goods will be returned to our nearest depot until we receive further instruction from you. A re-delivery charge will be added to the Price to cover additional haulage. If after 10 Business Days from the date of an unsuccessful delivery you have not taken delivery of the Goods, we may resell or otherwise dispose of part or all of the Goods and charge you for the storage and delivery costs incurred by us.
- 7.7** If you are purchasing Goods, or Goods and Installations Services, we will deliver the Goods and complete the Installation Services on or about the Estimated Delivery Date (unless otherwise agreed in writing by you and us).
- 7.8** If, after a failed delivery to you, or you fail to take delivery on completion of the manufacture of the Goods, you do not rearrange delivery or arrange for collection, we will contact you for further instructions and may charge you for storage costs for the amount of £2 per square metre of storage per day and any further delivery costs until we have been able to obtain your further instructions.
- 7.9** We will endeavour to meet the Estimated Delivery Date. In the event of delays in delivering the Goods and completing the Installation Services by an event outside our control (in accordance with clause 17 (Events outside of our control), you will be contacted as soon as possible and we will take steps to minimise the effect of the delay. Provided we do this, we will not be liable for the delays caused by such events, but if there is a risk of substantial delay you may contact us to end the contract and receive a refund for any payments already made in respect of the Goods which you have not received.
- 7.10** We may have to suspend the supply of the Goods (or any part thereof) to:
- (a) deal with technical problems or make minor technical changes;
 - (b) update the Goods (or any parts thereof) to reflect changes in relevant laws and regulatory requirements; or
 - (c) make changes to the Goods as requested by you or notified by us to you (in accordance with clause 6 (Our rights to make changes).
- 7.11** We will contact you in advance to tell you we will be suspending supply of the Goods, unless the problem is urgent or an emergency. You may contact us to end the contract for the Goods if we suspend it, or tell you we are going to suspend it, in each case for a period of more than 60 days from the Estimated Delivery Date and we will refund any sums you have paid in advance for the Goods in respect of the period after you end the contract.
- 7.12** We may suspend the supply of the Goods if you do not pay us for the Goods when you are supposed to (in accordance with clause 11 (Price and payment)) until such amounts outstanding have been paid. We will contact you to confirm we are suspending the supply of the Goods. We will not charge you for the

Goods during the period for which they are suspended. As well as suspending the Goods, we can also charge you interest on your overdue payments (in accordance with clauses 11.5 and 11.6, as the case may be).

8. Installation Services

- 8.1 We will carry out only the Installation Services (unless otherwise agreed in writing between us and you).
- 8.2 You will permit us (and our agents, employees and contractors) access to the Property and installation site at all reasonable times so that we may complete the Installation Services between the hours of 7.00am and 6.00pm.
- 8.3 You will ensure the Property and installation site is prepared and ready for the Installation Services before the time of commencement of the Installation Services.
- 8.4 If you do not allow us access to the Property to perform the Installation Services as arranged or the Property and installation site is not prepared and ready for the Installation Services (and you do not have a good reason for this), we may charge you additional costs incurred by us as a result at a rate of £840 per day (or any part day thereof), and you will have to wait until the next date we are available before we are able to perform the Installation Services. If, despite our reasonable efforts, we are unable to contact you or re-arrange access to the Property we may end the contract.
- 8.5 Neither us (nor our agents, employees or contractors) will be responsible for any structural defects or underground obstructions existing at or in the Property or installation site at the time of commencement of the Installation Services and which become evident as the Installation Services progress.
- 8.6 We will make good any damage to your property caused by us, our agents, employees or contractors during the Installation Services, excluding damage of an insignificant or minor nature, including the examples referred to in clause 13.4(h) below. However, we are not responsible for the cost of repairing any pre-existing faults or damage to the Property that we discover while providing the Installation Services.
- 8.7 You will be required to provide suitable welfare facilities, including rest room facilities and access to drinking water, to us (and our agents, employees and contractors), in accordance with The Construction (Design and Management) Regulations 2015.
- 8.8 Unless otherwise stated in the Order Confirmation or agreed in writing by us, it is your responsibility to provide any specialist equipment, including cranes, for us (and our agents, employees and contractors) to provide the Installation Services.
- 8.9 It is your responsibility to remove and replace curtains, blinds and pelmets. We will not be required to remove existing fittings and materials so that they may be capable of re-use.
- 8.10 Unless otherwise agreed in writing by us, whether as stated on the Order Confirmation or otherwise, you will be responsible for disposal of all waste and packaging arising from the Installation Services. If you make alternative arrangements for the removal of waste material, we cannot accept liability in respect of any accident, injury or damage resulting from your inability to arrange for the safe disposal of such waste material.

8.11 We are not permitted to move telephone cables and junction boxes at the Property, for example attached to existing window frames. It is your responsibility to arrange with your telephone provider for the relocation of these, either before or during the Installation Services.

8.12 It is your responsibility to ensure that any alarm systems at the Property, for example attached to doors or windows which are to be replaced, are disconnected before the Installation Services (and replaced and connected following the Installation Services).

9. Survey and approvals

- 9.1 You will be solely responsible for (unless otherwise agreed in writing between us and you):
- (a) obtaining a Survey where required and providing us with a copy of the Survey before we proceed with the Order;
 - (b) where we survey you will ensure the Property and Survey site is prepared and ready for Survey Services before the time of commencement of the Survey Services.
 - (c) If you do not allow us access to the Property to perform the Survey Services as arranged or the Property and Survey site is not prepared and ready for the Survey Services (and you do not have a good reason for this), we may charge you additional costs incurred by us as a result. If, despite our reasonable efforts, we are unable to contact you or re-arrange access to the Property we may end the contract.
 - (d) where we (or any third party instructed by us) carry out a Survey and/or submit drawings, by signing the Order Confirmation you are confirming that you have checked the dimensions and you accept responsibility as we cannot legislate for what happens to the structural openings once a measure has taken place;
 - (e) arranging FENSA certification and electrical safety certification in accordance with "Part P" of the building regulations (where appropriate);
 - (f) obtaining all relevant and necessary approvals, including but not limited to any deed of covenant or landlord approval and/or those from local authorities in respect of building regulations, planning permission, alterations to listed buildings or alterations carried out in a conservation area. We cannot be held responsible for any delay in completion of the contract, or other loss directly arising from your failure or delay in obtaining any of the above. Any costs associated with taking down or removing an installation in these circumstances will be the chargeable to you; and
 - (g) approval of samples, subject to clause 4.2. We cannot be held responsible for any delay in completion of the contract, or other loss directly arising from your failure or delay in approving samples.

10. Title and risk

- 10.1 The Goods will be your responsibility from the time of delivery to the Property (in accordance with clause 7.3).

- 10.2 Ownership of the Goods will pass to you when we receive payment of the Price in full.
- 11. Price and payment** 11.1 The price of the Goods and Installation Services shall be the Price (unless another price has been agreed by you and us in writing).
- 11.2 **The Price is subject to adjustment by us following the Survey if additional costs of supplying or installing the Goods are identified as a result of the Survey.**
- 11.3 Subject to clause 11.4, the Price shall be paid as follows (unless otherwise agreed by you and us in writing):
- (a) the Deposit payable upon submission of the Order Acceptance;
- (b) 25% (twenty five percent) of the Price (inclusive of any uplift in the Price following Survey) payable upon submission of the Order Confirmation; and
- (c) the balance of the Price payable no less than 14 days prior to delivery of the Goods and/or the commencement of the Installation Services.
- 11.4 If the Price is less than £5000 (five thousand pounds), the Price shall be payable upon submission of the Order Acceptance.
- 11.5 The Price is exclusive of VAT. You shall, on receipt of a valid VAT invoice from us, pay to us such additional amounts in respect of VAT as are chargeable on the supply of the Goods and Installation Services (where applicable). If the rate of VAT changes between the date of the Order and the date of delivery, we will adjust the VAT you pay, unless you have already paid for the Goods in full before the change in the rate of VAT takes effect.
- 11.6 Where you are business or corporate customer, and without prejudice to any other rights that we may have (including the right to suspend any further deliveries or installation), if you fail to pay any amount due to us by the due date we may charge you interest on any overdue amount from the date of which payment was due to that on which it is made (whether before or after judgment) on a daily basis in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 and reimburse to us all costs and expenses (including legal costs) incurred in the collection of any overdue amount.
- 11.7 Where you are an individual customer, if you do not make any payment due to us by the due date for payment, we may charge interest to you on the overdue amount at the rate of 4% a year above the base rate of Lloyds Bank Plc from time to time. This interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. You must pay us interest together with the overdue amount.
- 12. Cancellations**
- 12.1 No refund will be made for the Deposit, or the payments made in accordance with clause 11.3(b) or clause 11.4 (where applicable), paid by you except:
- (a) if we cancel the Order as a result of:
- (i) the Goods no longer being in stock, or our third party manufacturers are unable to manufacture the Goods and fulfill the Order; or
- (ii) an event outside of our control, in accordance with clause 17 (Event outside of our control) below; or
- (b) you decide to cancel the Order as a result of us making a more significant change to the Specification, pursuant to clause 6.2.
- 12.2 If you wish to cancel the Services, you must give written notice to us. Save in the circumstances set out in clause 12.1 above, the following cancellation charges ('**Cancellation Charges**') shall apply:
- (a) If your notice of cancellation is received by us before the Order Confirmation has been accepted, you will be charged £1000 (one thousand pounds) for administrative costs.
- (b) If your notice of cancellation is received by us after the Order Confirmation, but before the manufacture of the Goods has commenced, you will be charged:
- (i) where the Price is £5,000 (five thousand pounds) or more, the Deposit and the payment made in accordance with clause 11.3(b); or
- (ii) where the Price is less than £5000 (five thousand pounds), the greater of £1000 or 50% (fifty percent) of the Price
- (c) If your notice of cancellation is received by us after the manufacture of the Goods has commenced, you will be charged the Price (inclusive of the Deposit already paid).
- 12.3 We shall be entitled to deduct any Cancellation Charges from any monies paid on account by you and any additional amount payable by you in respect of Cancellation Charges shall be payable within 7 days of the date of cancellation. If monies paid on account by you exceed the amount of the Cancellation Charges, we will pay any balance to be refunded to you within 7 days of the date of cancellation.
- 12.4 Without limiting our other rights or remedies, we may terminate this contract with immediate effect if in our reasonable opinion you:
- (a) fail to pay any amount due under this contract on the due date for payment;
- (b) commit a material breach of your obligations under the Terms and (if such breach is remediable) fail to remedy that breach within 5 days after receipt of notice in writing of the breach; or
- (c) enter bankruptcy.
- 12.5 If we terminate this contract under clause 12.4, then we will be under no obligation to refund any monies paid by you and you shall be liable for the Cancellation Charges as if you had cancelled the Order for the Services.
- 13. Defective Goods or Installation Services**
- 13.1 If you have any questions or complaints about the Goods or Installation Services please contact us in accordance with clause 19 (Notices and communications).
- 13.2 The Goods have the benefit of the Warranty. We will provide a copy of the Warranty upon your reasonable request. You will use your reasonable endeavours to enforce the terms of the Warranty against the manufacturer offering such Warranty prior to seeking any redress against us.
- 13.3 We agree to fully investigate any alleged defect notified to us by you provided we have received full payment of all sums due and payable to us by you.
- 13.4 We will not be responsible for:

- (a) any colour variation on Goods made from wood, including when finished wood stains are applied;
- (b) any minor or insignificant colour variation between any digital image or physical sample of existing units and/or fittings at the Property provided by you and the Goods provided by us, if using our colour match service;
- (c) any imperfections of a minor or insignificant nature;
- (d) any defect arising from your actions following delivery of the Goods and performance of the Installation Services;
- (e) any defect arising from your failure to follow our oral or written instructions as to the use and maintenance of the Goods;
- (f) any defect arising from any alterations or repairs (or attempts to alter or repair) made by you or by someone else at your request;
- (g) any defect arising as a result of fair wear and tear or wilful damage caused by you;
- (h) any minor or insignificant markings and/or indentations in the close proximity of where the Installation Services are carried out which are caused by us, our agents, employees or contractors during the Installation Services; or
- (i) the Goods' suitability for any particular purpose required by you (whether or not the particular purpose was known or communicated to us).

13.5 With regards to Goods that are windows, we are unable to guarantee that condensation will be eliminated following installation as condensation is a ventilation issue and cannot be resolved unless a free flow of air is allowed to circulate.

13.6 If we deem that the Goods are defective we will (subject to your agreement in writing):

- (a) repair the Goods;
- (b) replace the Goods; or
- (c) provide you with a full or partial refund.

14. Our liability to you

14.1 Subject to clause 14.2 below, if we fail to comply with these Terms, we are responsible for loss or damage you suffer that is a foreseeable result of our breach of the Terms or our negligence, but we are not responsible for any loss or damage that is not foreseeable. Loss or damage is foreseeable if they were an obvious consequence of our breach or if they were contemplated by you and us at the time we entered into this contract.

14.2 We only supply the Goods for domestic and private use. If you use the Goods for any commercial, business or re-sale purpose, we will have no liability to you for any loss of profit, loss of business, business interruption, or loss of business opportunity.

14.3 Our total liability to you in respect of all losses arising under or in connection with these Terms or the contract shall not exceed the total amount paid by you under the contract.

14.4 We do not exclude or limit in any way our liability for:

- (a) death or personal injury caused by our negligence or the negligence of our employees, agents or subcontractors;
- (b) fraud or fraudulent misrepresentation; and

- (c) which we cannot exclude or limit our liability under applicable laws.

15. Intellectual property rights

15.1 Unless otherwise notified to us in writing, you consent to us reproducing or otherwise using any digital images taken of the Goods at the Property after the Installation Services have been completed for promoting and advertising our services, including in printed publications, publications on the internet or on our website.

15.2 We will immediately remove any digital images from our website if requested to do so.

15.3 All digital images taken by us of the Goods at the Property after the Installation Services have been completed are our property.

16. How we may use your personal information

16.1 We will use the personal information you provide to us to:

- (a) supply the Goods and perform the Installation Services to you;
- (b) to process your payments for the Goods and Installation Services; and
- (c) to inform you about similar goods that we provide, but you may stop receiving these at any time by contacting us.

16.2 We will only give your personal information to third parties where the law either requires or allows us to do so.

17. Events outside our control

17.1 We will not be liable or responsible for any failure to perform, or delay in performance of, any of our obligations under these Terms that is caused by events outside our control.

17.2 An "event outside of our control" includes any act, event, non-occurrence, omission or accident beyond our reasonable control and includes, in particular (without limitation), the following:

- (a) civil commotion, civil war, riot, invasion, armed conflict, terrorist attack or threat of terrorist attack, war (whether declared or not) or threat or preparation for war;
- (b) acts of God, collapse of buildings, fire, explosion, inclement weather, storm, flood, earthquake, subsidence, drought, epidemic or other natural disaster;
- (c) impossibility of the use of railways, shipping, aircraft, motor transport or other means of public or private transport;
- (d) impossibility of the use of public or private utility networks;
- (e) the acts, decrees, legislation, regulations or restrictions of any government;
- (f) strikes or labour unrest (other than in relation to our own employees); or
- (g) default by one of our suppliers or sub-contractors.

17.3 Our obligations under these Terms are suspended for the period that such event outside of our control continues, and we will have an extension of time to perform these obligations for the duration of that period. We will take reasonable steps to bring such an event to a close or to find a solution by which our obligations under these Terms can be performed despite such an event.

18. Transfer of rights and obligations

- 18.1 We may transfer our rights and obligations under these Terms to another organisation. We will always tell you in writing if this happens and we will ensure that the transfer will not affect your rights under these Terms.
- 18.2 You may not transfer your rights and obligations under these Terms to any other person without our written consent.

19. Notices and communications

- 19.1 If you wish to contact us in writing, or if any clause in these Terms requires you to give us notice in writing (for example, to cancel the contract), you can send this to us by hand or by pre-paid post to Zakuna Limited, Cedar Barn, Birdham Road, Chichester, West Sussex, PO20 7BX, or by email to info@Zakuna.co.uk. We will confirm receipt of this by contacting you in writing.
- 19.2 If you wish to contact us by telephone, our contact number is 01243 884104.
- 19.3 If we have to contact you or give you notice in writing, we will do so by e-mail, by hand, or by pre-paid post to the address or email address you provide to us in the Order.

20. General

- 20.1 If any court or competent authority decides that any of the provisions of these Terms are invalid, unlawful or unenforceable to any extent, the term will, to that extent only, be severed from the remaining terms, which will continue to be valid to the fullest extent permitted by law.
- 20.2 If we fail, at any time while these Terms are in force, to insist that you perform any of your obligations under these Terms, or if we do not exercise any of our rights or remedies under these Terms, that will not mean that we have waived such rights or remedies and will not mean that you do not have to comply with those obligations. If we do waive a default by you, that will not mean that we will automatically waive any subsequent default by you. No waiver by us of any of these Terms shall be effective unless we expressly say that it is a waiver and we tell you so in writing.
- 20.3 This contract is between you and us. No other person shall have any rights to enforce any of these Terms. Neither of us will need to get the agreement of any other person in order to end the contract or to make any changes to these Terms.
- 20.4 These Terms shall be governed by English law and we both agree to the exclusive jurisdiction of the English courts.