

**DAYLIGHT BUSINESS SOLUTIONS LIMITED**  
**TERMS AND CONDITIONS OF SALE**

**1 DEFINITIONS AND INTERPRETATION**

- 1.1 The definitions and rules of interpretation in this Condition 1 apply in these Conditions.
- (a) "DBS" means Daylight Business Solutions Limited, a company registered in England and Wales with company number 07864472 and having its registered office at No. 4, 10 Charles Street, London W1J 5DR.
- (b) "DBS Party" means DBS, its directors, employees, agents, subsidiaries, parent and/or associated companies and sub-contractors.
- (c) "Customer" means the person, firm or company who purchases the Products from DBS.
- (d) "Conditions" means these standard terms and conditions of sale.
- (e) "Contract" means any contract between DBS and the Customer for the sale and purchase of the Products, incorporating the Conditions.
- (f) "Installation" means the installation of Products on windows or other glass at a Site.
- (g) "Products" means any products agreed in the Contract to be supplied to the Customer by DBS (including any part or parts of them).
- (h) "Losses" means loss of profit, loss of reputation, liabilities, demands, damages, costs, fines, judgments, penalties, claims, interest, expenses and all other losses (including, without limitation, any direct, indirect or consequential losses and any legal and other professional fees and disbursements, including legal and other fees and disbursements incurred in defending successfully, in whole or in part, a claim for liability).
- (i) "Normal Office Hours" means 9:00 to 17:00 Monday to Friday, excluding public holidays.
- (j) "Order Confirmation" means the last written order confirmation for the Products, issued by DBS and forming part of the Contract.
- (k) "Order" means a purchase order, acceptance of a quotation or other order for a Survey, Products and Installation or any of them.
- (l) "Services" means Survey, Installation or other services in each case agreed in the Contract to be supplied to the Customer by DBS.
- (m) "Site" means a building or part of a building where Products may be installed.
- (n) "Survey" means a survey of a Site to gather information relating to the supply and/or installation of the Products.
- 1.2 A reference to a particular law is a reference to it as it is in force from time to time taking account of any amendment, extension, application or re-enactment.
- 1.3 Words in the singular include the plural and in the plural include the singular.
- 1.4 A reference to one gender includes a reference to the other gender.
- 1.5 A reference to writing or written includes e-mail but not SMS messaging.

**2 QUOTATIONS AND BASIS FOR SALE**

- 2.1 Each Order received by DBS from the Customer shall constitute an offer by the Customer to buy Products and/or Services subject to the Conditions.
- 2.2 No Order from the Customer shall be deemed to be accepted by DBS and a Contract shall not be capable of creation until the Order Confirmation is issued by DBS or (if earlier) DBS delivers the Products or Services to the Customer.
- 2.3 Acceptance by the Customer of delivery of the Products or provision of access to perform Installation shall (without prejudice to Condition 2.2) be deemed to constitute unqualified acceptance of the Conditions.
- 2.4 Quotations are provided by DBS on the basis that no Contract shall come into existence except in accordance with Condition 2.2 or Condition 2.3. Unless otherwise specified on the quotation, any quotation is valid for a period of 30 days only from its date, provided that DBS has not previously withdrawn it in writing.
- 2.5 No Order from the Customer which has been accepted by DBS in accordance with Condition 2.2 may be cancelled by the Customer except with DBS's written agreement.

**3 APPLICATION OF CONDITIONS**

- 3.1 Subject to any variation under Condition 3.3, the Conditions and the Order Confirmation alone shall govern and be incorporated into the Contract to the exclusion of all other terms and conditions (including any terms and/or conditions which the Customer purports to apply under any Order, confirmation of order, specification or other document or imply by trade custom, practice or course of dealing) unless and to the extent expressly stated in the Order Confirmation (for example where this cross refers to the Customer's specification as the applicable specification for the Products).
- 3.2 No terms or conditions endorsed on, delivered with or contained in the Customer's 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 and shall only form part of the Contract if expressly stated in the Order Confirmation as being incorporated into the Contract.
- 3.3 Any variation to the Conditions must be expressly agreed in writing by DBS.
- 3.4 The Customer acknowledges that it has not relied on any statement, promise, representation or warranty made or given by, or on behalf of, DBS which is not set out in the Contract. This Condition 3.4 shall not exclude or limit DBS's liability for fraudulent misrepresentation.

**4 QUANTITY AND DESCRIPTION OF SERVICES AND PRODUCTS**

- 4.1 The quantity and description of the Services and Products shall be as set out in the Order Confirmation, subject in the case of the quantity to the adjustments stated in Condition 7.
- 4.2 All samples, drawings, descriptive matter, specifications and advertising provided or issued by DBS and any descriptions or illustrations contained in DBS's brochures or on its website are for illustrative purposes only and do not form part of the Contract unless expressly stated in the Order Confirmation as being the specification to which the Products are being manufactured.
- 4.3 DBS may make changes to the specification to which the Products are being manufactured where required to conform to applicable legislation without referring back to the Customer for approval. Where any such changes are made references to specification in the Order Confirmation and Condition 10.4 shall refer to the amended specification.

**5 PRICE**

- 5.1 The price(s) for the Services and Products shall, subject to these Conditions, be the price(s) and/or (as the case may be) the basis for the price(s) stated in the Order Confirmation.
- 5.2 If the Customer fails to provide access to the Site for Survey and/or Installation at the times reasonably specified by DBS, fails to provide any licence or consent pursuant to Condition 15 or fails to prepare the Site in the manner specified by DBS, DBS may raise additional charges at its applicable daily rates from time to time for any time wasted by any DBS Party as a result. If any such failure continues for more than 30 days after the date specified by DBS for Installation DBS shall in addition be entitled to invoice the full price for the Services and Products.
- 5.3 If DBS, at the request of the Customer, carries out Survey or Installation outside Normal Office Hours, DBS may, unless otherwise specified in the Order Confirmation, levy an additional charge at its applicable overtime rates from time to time.

**6 PAYMENT**

- 6.1 Payment of each invoice is due (in the currency in which the price is stated in the Order Confirmation) not later than 14 days from the end of the month in which the invoice is issued unless otherwise specified in the Order Confirmation. Invoices shall be submitted at the times specified in the Contract or, if not so specified, Invoices for the price of Services and Products may be submitted at any time following conclusion of the Contract.
- 6.2 No payment shall be deemed to have been received until DBS has received cash or cleared funds.
- 6.3 The Customer shall make all payments due under the Contract in full without any deduction whether by way of set-off, retention, counterclaim, discount, abatement or otherwise save for any discount specified in the Contract.
- 6.4 If the Customer fails to pay DBS any sum due under the Contract by the due date, the Customer shall be liable to pay interest to DBS on such sum from the due date for payment at the annual rate of 5% above the base lending rate from time to time of HSBC Bank plc, accruing on a daily basis until payment is made, whether before or after any judgment. DBS reserves the right (at its option) to alternatively claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.
- 6.5 If, in the opinion of DBS, the credit-worthiness of the Customer deteriorates, DBS may prior to delivery require full or partial payment of the price or the provision of security for payment of a type (including, without limitation, an irrevocable letter of credit confirmed by a United Kingdom bank) and in a form acceptable to DBS.
- 6.6 Any credit extended to the Customer may be changed or withdrawn at any time.
- 6.7 DBS shall be entitled at any time or times, without notice to the Customer, to set off any sum or sums owing to it from the Customer against any sums owed to the Customer by DBS whether any such sum is present or future, liquidated or unliquidated, under this Contract or not and irrespective of the currency of its denomination. Any exercise by DBS of its rights under this Condition shall be without prejudice to any other rights or remedies available to it under this Contract or otherwise.

**7 SURVEY**

- 7.1 The Customer shall upon request from time to time provide DBS with access to each Site for the purpose of carrying out Surveys.
- 7.2 The price for Products and Installation is based on the area of Products specified in the Order Confirmation. This price may be based on an estimate of the area. If following detailed Survey of a Site conducted or agreed by DBS the area is determined to be different to the area specified in the Order Confirmation the Contract shall be deemed amended accordingly and the price for Products (including Installation) shall be increased or decreased proportionately.
- 7.3 Where it is specified in the Order Confirmation that Surveys are to be carried out by the Customer the Customer shall be responsible for the accuracy of such Surveys. If, as a result of errors in Surveys carried out by the Customer, Product cannot be installed the Customer shall nevertheless pay the price of such Product on the dates on which it would have been paid had the errors not been made and if DBS is manufactures additional Product to correct such errors the Customer shall pay for such additional Product in proportion to the rate specified in the Order Confirmation.

**8 INSTALLATION**

- 8.1 Any dates specified by DBS for Installation of the Products are estimates only. Time for Installation is not of the essence and shall not be made so by notice from the Customer.
- 8.2 The Customer shall provide DBS with access to each Site on the date or dates specified by DBS to enable DBS to carry out Installation. The Customer shall be responsible for ensuring that such access is provided in accordance with DBS' Installation requirements. These requirements comprise clearing of desks or obstacles around the windows or areas to be worked in, moving of any computer, office or electrical equipment, ensuring a dust free environment and such other requirements as may be notified by DBS to the Customer. Unless otherwise specified in the Order Confirmation, the Customer shall be responsible at its own cost for providing any access platforms or scaffold required for Installation.
- 8.3 Where Installation is scheduled to take more than one day the Customer shall provide suitable secure storage facilities at each Site for storage of the Products prior to Installation and Products stored at a Site shall be at the risk of the Customer.
- 8.4 The Customer shall, unless otherwise specified in the Order Confirmation, be responsible for removal and disposal of waste resulting from Installation including, but not limited to, old window film, Product trimmings, Product backing sheets and waste water
- 8.5 Unless otherwise specified in the Order Confirmation, the price does not include removal of old window film and DBS reserves the right to make an additional charge at its applicable daily rates for any work in removing old window film prior to Installation.
- 8.6 If the Customer fails to provide DBS with access to each Site on the dates or otherwise in accordance with this Condition 8, DBS shall be entitled to levy an additional charge to cover its wasted costs.
- 8.7 The warranties in Conditions 10.2 and 10.4 shall not have effect unless the Customer has confirmed in writing that the Products have been installed to its satisfaction.

**9 RISK AND TITLE**

- 9.1 The Products are at the risk of the Customer from the time of Installation except that Products handed over for storage in the facilities referred to in Condition 8.3 shall be at the risk of the Customer until returned to a DBS Party carrying out Installation.
- 9.2 Ownership of Products shall pass to the Customer upon Installation.

**10 WARRANTIES AND EXCLUSIVE REMEDY**

- 10.1 Good title  
DBS warrants that it has good title to sell the Products at the time when title passes to the Customer in accordance with the Conditions.
- 10.2 Warranty for Installed Product  
DBS warrants (subject to the other provisions of the Conditions) that Installed Product will not experience adhesive failure, bubbling, cracking, crazing, delamination, demetalisation or peeling or any other defect within the applicable warranty period.
- 10.3 Warranty Period  
The warranty in Condition 10.2 shall be for the period specified in the Order Confirmation, or if not so specified, for a period of 10 years from the date of Installation (or where the Customer fails to provide access in accordance with Condition 8.2 from the date originally specified by DBS for Installation).
- 10.4 Compliance with specification and fitness for particular purpose  
DBS warrants (subject to the other provisions of the Conditions) that at the time of delivery and for a period of 3 months from the date of delivery (or where the Customer refuses or fails to accept delivery, the original due date for delivery) the Products shall correspond in all material respects with the written specification for the Products that is included, or referred to, in the Order Confirmation.

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**10.5 Warranty conditions**

(a) DBS shall not be liable for a breach of any of the warranties in, Condition 10.2 or 10.4 unless:-

- (i) the Customer gives written notice of the breach to DBS within 45 days of the time when the Customer discovers or ought reasonably to have discovered the breach; and
  - (ii) DBS is given a reasonable opportunity after receiving the notice of the breach to examine the relevant Products and the Customer (only if requested to do so by DBS and only in the case of Products subject to Condition 8 which have not been Installed) returns such Products to DBS's place of business for the examination to take place there.
- (b) DBS shall not be liable for a breach of any of the warranties in Condition 11.2 if the breach arises:-
- (i) because of any failure to follow any of DBS's instructions and good trade practice as to the storage, installation (where not installed by DBS), care, cleaning and maintenance of the Products; or
  - (ii) non-conforming applications or use of the Products in contaminated or industrial premises; or
  - (iii) the breach is caused by fair wear and tear to the Products; or
  - (iv) the Customer alters, repairs or attempts to alter or repair the affected Products without the written consent of DBS
  - (v) the breach does not result from the manufacture of the Products; or
  - (vi) the breach is otherwise caused by the Customer, its employees, officers, agents, subcontractors and/ or any other third party.

10.6 Where Products incorporate, at the request of the Customer, non-standard artwork, DBS shall not have any liability to the extent that the Customer approves a sample or proof of the Products, and the Products conform to that sample or proof.

10.7 No representation or warranty as to savings

DBS has commissioned independent test laboratories to report on the performance of many of the Products and based on these reports, Surveys and information provided by the Customer DBS may provide the Customer with reports of energy and financial savings which might result from Installation of Products at Sites. The reports are provided in good faith but the Customer should recognise that these are theoretical calculations based on input data and assumptions as to the use of the Sites. The actual savings achieved by the Customer may vary. DBS will, on request provide the Customer with the test results and assumptions used for the purpose of preparing such reports of energy and financial savings so that the Customer or its engineers may verify the calculations. However, DBS does not or represent or warrant that the Products will deliver the savings estimated in any such report.

10.8 Customer's exclusive remedy

Subject to Conditions 10.5 to 10.7, if any of the Products do not conform with any of the applicable warranties in Condition 10.2 or 10.4, DBS shall at its option repair or replace such Products (or the defective part) or refund, or provide a credit of, the price of such Products on a pro rata basis and the Customer shall provide DBS with access to the Site in accordance with Condition 8 for the purpose of installing any such repair or replacement.

10.9 If DBS complies with Condition 10.8 then, subject to Condition 11.1, it shall have no further liability for a breach of any of the warranties in Condition 10.2 or 10.4 in respect of the affected Products nor shall the Customer be entitled to treat the breach or defective nature of such Products as grounds for rescission of any Contract between the Customer and DBS.

10.10 All representations, warranties, conditions and other terms expressed or implied by statute or common law (save for the terms implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.

10.11 **THE BUYER ACKNOWLEDGES AND ACCEPTS THAT THE WARRANTIES IN CONDITIONS 10.1, 10.2 AND 10.4 ARE THE SOLE AND ENTIRE WARRANTIES PROVIDED BY DBS AND THAT THE REMEDIES AT CONDITION 10.9 ARE (SUBJECT TO CONDITION 11.1) ITS SOLE AND ENTIRE REMEDIES IN CONNECTION WITH THE GOODS.**

**11 LIMITATION OF LIABILITY**

11.1 Nothing in the Conditions excludes or limits the liability of DBS for:-

- (a) death or personal injury caused by DBS's negligence; or
- (b) defective products that arise under the Consumer Protection Act 1987; or
- (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
- (d) fraud or fraudulent misrepresentation; or
- (e) any matter which it would be unlawful for DBS to exclude or attempt to exclude its liability for.

11.2 Subject to Condition 11.1:-

- (a) the total liability of all DBS Parties in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising under or in connection with the Contract shall be limited to the Contract price; and
- (b) no DBS Party shall be liable for loss of revenue or profits, production, goodwill, injury to reputation, business, business opportunity or anticipated saving, loss of, or corruption to, data or information, any indirect or consequential loss or damage or subject to Condition 16.2, any claims by a customer of the Customer or any third party to whom the Customer has sold or otherwise transferred the Products, in each case arising out of or in connection with the Contract.

11.3 Window glass may contain hidden defects. The application of Products to glass containing such defects may cause the glass to crack or shatter at the time of application or afterwards. Accordingly, no DBS party shall be liable for any cracking or shattering of glass resulting from the application of the Products.

11.4 DBS's prices are determined on the basis of the limits of liability set out in the Conditions. The Customer may by written notice to DBS request DBS to agree a higher limit of liability provided insurance cover can be obtained for such higher limit. DBS shall use reasonable endeavours to effect insurance up to such limit and the Customer shall pay upon demand the amount of any and all premiums. The Customer shall disclose such information as the insurers shall require. In no case shall the Customer be entitled to recover from DBS more than the amount received from the insurers with whom cover is instructed in accordance with this Condition 11.4.

**12 INTELLECTUAL PROPERTY**

12.1 The Customer shall hold each DBS Party harmless from and against all claims made against any DBS Party arising from DBS's manufacture and supply of the Products in compliance with the Customer's requirements and/ or specifications for the Products, including without limitation infringing any intellectual property rights of any third party and/ or the printing of any unlawful or libellous matter on the Products.

12.2 Nothing in the Contract shall transfer any intellectual property rights to the Customer.

**13 TERMINATION**

13.1 If any sum owed by the Customer to DBS (whether under the Contract or

otherwise) is not paid to DBS by the due date, or there is a change of control of the Customer which has not been approved in writing by DBS, or the financial position of the Customer deteriorates to an extent that, in the opinion of DBS, the Customer's capability to fulfil its obligations under the Contract is placed in jeopardy DBS may, without prejudice to any of its other rights:-

- (a) stop any Products in transit;
- (b) suspend further Services, Installations and deliveries to the Customer; and/ or
- (c) by notice in writing to the Customer terminate any Contract with the Customer with immediate effect.

13.2 The Customer shall promptly notify DBS in writing of any change of control.

13.3 Upon termination of any Contract any indebtedness of the Customer to DBS shall become immediately due and payable notwithstanding any provision to the contrary in such Contract or the Conditions and DBS shall be relieved of any further obligation to supply any Services or Products to the Customer pursuant to such Contract.

13.4 The provisions of the Conditions which expressly or, by the nature of their terms, are implicitly intended to survive termination shall survive termination of the Contract.

**14 CONFIDENTIALITY**

14.1 All artwork, specifications, reports and information prepared by DBS shall be treated as confidential and shall not be disclosed to any third party without DBS's prior written consent or used by the Customer other than for purposes authorised in writing by DBS.

**15 LICENCES AND CONSENTS**

15.1 If any licence or consent of any competent authority or any landlord is required for any Survey or the acquisition, carriage, Installation or use of the Products by the Customer, the Customer shall obtain this at its own expense and if requested produce evidence of the same to DBS on demand. Failure to obtain any licence or consent shall not entitle the Customer to withhold or delay payment of the price.

**16 ASSIGNMENT**

16.1 DBS may assign, transfer, mortgage, subcontract or deal in any other manner with the Contract or any part of it to any person, firm or company.

16.2 Where the Customer is specified in the Order Confirmation to be a financial lessor, subject to these Conditions, the warranties in Conditions 10.2 and 10.4 shall benefit the lessee specified in the Order Confirmation and in this regard references to the Customer shall be construed to include a reference to the lessee. The lessee may not assign the benefit of such warranties.

16.3 Save as provided in Condition 16.2, the Customer shall not be entitled to assign the Contract or any part of it without the prior written consent of DBS, which consent DBS may refuse or make conditional in its absolute discretion.

**17 FORCE MAJEURE**

17.1 DBS shall not be in breach of the Contract, nor liable to the Customer for any Losses arising from DBS's performance of the Contract being prevented, hindered, delayed, cancelled or rendered uneconomic, by reason of acts, circumstances, events, omissions and/ or accidents beyond DBS's reasonable control (a Force Majeure Event), including but not limited to epidemic or any act of God, fire, flood, or other natural disaster, war, threat of war, imposition of sanctions, embargo or similar actions, terrorist attack, civil commotion or riots, labour dispute, fire, explosion or accidental damage, nuclear, chemical or biological contamination, failure of plant or machinery, difficulty in obtaining workmen materials or transport, or other similar circumstances affecting the supply of the Products, difficulty in the manufacture, delivery or installation of the Products by DBS's normal means.

17.2 In the case of a Force Majeure Event, DBS may in its absolute discretion terminate the Contract or cancel delivery of Products to the Customer or Installation or may, with the agreement of the Customer, deliver Products or conduct Installation at an agreed rate commencing after any suspension.

17.3 If due to a Force Majeure Event DBS has or is able to obtain insufficient stocks to meet all of its commitments, DBS may apportion available stocks between its customers at its absolute discretion.

**18 REFERENCE**

18.1 The Customer shall, unless otherwise specified in the Order Confirmation, permit DBS to refer to the Sites at which Products have been Installed in its marketing communications and will upon reasonable notice permit DBS and its prospective clients to make reasonable visits to such Sites for the purpose of viewing the Products.

**19 GENERAL**

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

19.2 Failure or delay by DBS 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 or at law.

19.3 Any waiver by DBS 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.

19.4 Save for Conditions 12.1 and 16.2, 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. The consent of any third party shall not be required for any amendment or termination of the Contract.

19.5 The Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.

**20 COMMUNICATIONS**

20.1 All communications between DBS and the Customer about the Contract shall be in writing and shall be delivered by hand or sent by pre-paid first class post or sent by fax or email (although not SMS messaging):-

- (a) in the case of communications to DBS, to the address, fax number and/ or email address included on the Order Confirmation or otherwise notified to the Customer by DBS; or
- (b) in the case of communications to the Customer, to any known address, fax number and/ or email address of the Customer, including any such address and/ or number set out in any document which forms part of the Contract or such other address, fax number and/ or email address as shall be notified in writing to DBS by the Customer.

20.2 Communications shall be deemed to have been received:-

- (a) if sent by pre-paid first class post, two working days after posting (exclusive of the day of posting); or
- (b) if delivered by hand, on the day of delivery;
- (c) if sent by fax on a working day prior to 4.00 pm, at the time of transmission and otherwise on the next working day; or
- (d) if sent by email on a working day prior to 4.00 pm, at the time of receipt and otherwise on the next working day.

20.3 Working day for the purposes of this Condition 20.2 shall mean a day on which the UK clearing banks are open for normal business in London and which is not a Saturday or Sunday.