

Evander - Standard Terms and Conditions

For the avoidance of doubt, these Terms will be applicable to business to business orders only and are not applicable to consumer and domestic customers.

1. Definitions and Interpretation

1.1. In these Terms, the following words/phrases have the following meanings:

“Contract” means the Order Form and these Terms.

“Customer” means the purchaser of the Services as specified in the Order Form.

“Evander” means Evander Glazing and Locks Limited.

“Evander Partners” means Evander’s specialist and strategic sub-contractors.

“Goods” means the goods and/or materials specified in the Order Form which will be sold to the Customer and/or installed at the Site including, without limitation, any glazing or locks or other ancillary materials specified in the Order Form.

“Order Form” means the order form and quotation provided by Evander to the Customer.

“Out of Hours” means all times outside of the Standard Business Hours.

“Services” means the services and/or Goods Evander agrees to provide to the Customer from time to time, including, without limitation, glazing, fitting, installation and emergency boarding up services, in each case as specified in the Order Form.

“Site” means the site or sites identified in the Order Form for the performance of the Services.

“Standard Business Hours” means Monday to Friday, 08:30 to 17:00.

“Terms” means the provisions set out in this document titled “Evander – Standard Terms and Conditions”.

1.2. Words in the singular include the plural and vice versa, references to any gender include all others and references to legal persons include natural persons and vice versa. Headings are for convenience and are not intended to affect the interpretation of these Terms.

1.3. Delay in exercising, partially exercising, or a failure to exercise any right or remedy in connection with the Contract will not operate as a waiver of that right or remedy and will not constitute a waiver of any subsequent breach.

1.4. If the whole or part of any provision contained in the Contract is or is held to be illegal, invalid or unenforceable in whole or in part, then the relevant whole or part of a provision is intended to be severable from the rest of the Contract, will accordingly be severed and the legality, validity and enforceability of the rest of the Contract will not be affected.

2. Quotes and Orders

2.1 An Order will not bind Evander unless and until it has been accepted by Evander in writing (which may be via a portal).

2.2 Evander’s quote in the Order Form must be accepted in full and not in part. Evander’s quotation will remain open for acceptance for 30 days from the date of issue on the Order Form. Evander reserves the right to charge any of the following surcharges: (i) an environmental surcharge; (ii) a surcharge for any works undertaken within the M25; and/or (iii) any other surcharge(s) as may be specified in the Order Form.

2.3 Evander will use reasonable endeavours to provide the Services on the dates specified in the Order Form. Time of delivery of the Services is not an essential term of the Contract. The Customer will be responsible for the accuracy of an Order Form and for giving Evander all information reasonably necessary or reasonably requested by Evander to deliver the Services.

2.4 If Evander is required to hire any specialist equipment in order to deliver the Services to the Customer (including, but not limited to, scaffolding and/or scissor lifts) the Customer will be charged accordingly for the hire costs and all ancillary costs. If it is agreed with the Customer

- that Evander will be permitted to use any such equipment which is already installed at the Site, the Customer will provide any information, evidence or documentation reasonably requested by Evander in order for Evander to complete its own health and safety checks and due diligence on the equipment before use.
- 2.5 Unless otherwise expressly stated on the Order Form, Evander's quote on the Order Form is based upon the Services being delivered and installed during one continuous visit to Site, with unrestricted access and the Services undertaken in Standard Business Hours. Any Services completed during Out of Hours times will be priced separately on the Order Form.
 - 2.6 Evander has assumed free and uninterrupted access to the Site in providing its quotation on the Order Form.
 - 2.7 Evander has not allowed for any mirror coatings, privacy filming or manifestation unless otherwise stated on the Order Form.
 - 2.8 All decoration or making good is excluded from the Order Form unless agreed in writing in the Order Form.
 - 2.9 Any costs for Services requiring project management services are excluded from the Order Form, unless specifically agreed and set out in writing in the Order Form.
 - 2.10 Delays on the Site beyond Evander's control will be charged by Evander to the Customer accordingly.
 - 2.11 Evander reserves the right to apply extra charges as reasonably necessary to cover additional costs incurred through the Customer's failure to comply with any of these Terms.

3 Payment Terms

- 3.1 All amounts specified on the Order Form exclude VAT.
- 3.2 Deposit and stage payments may be required prior to the Services commencing unless other arrangements have been made and expressly agreed in the Order Form. For the avoidance of doubt, advance payment may be required in respect of any imported or custom materials, as specified in the Order Form.
- 3.3 Unless otherwise specifically agreed by Evander in writing in the Order Form, all invoices submitted for payment will become due for payment 30 days after the date of invoice.
- 3.4 Evander reserves the right to submit invoices to the Customer either in hard copy or electronically. Payment must be made in full and the Customer will not be entitled to exercise any set-off, lien or other similar right or claim or withholding of monies. Time of payment is an essential term of the Contract.
- 3.5 Evander reserves the right to increase its standard pricing on an annual basis for all clients on a date of its election (which may fall prior to the first anniversary of the Contract) at an amount no less than: (i) the percentage increase in the Retail Prices Index in the preceding 12 month period; and (ii) to reflect legislative changes (including but not limited to any changes to national living wage and/or national minimum wage). Evander will give the Customer not less than 30 days' prior notice of any change to its pricing and the revised pricing will take effect from expiry of the notice. Any change to the pricing will apply to all live Contracts the Customer has with Evander as at the date the change takes effect and not just this Contract.
- 3.6 Any discount offered and set out in writing in the Order Form is only applicable when payments are received by Evander on time and in full.
- 3.7 If the Customer cancels an appointment for the installation or delivery of the Services on the scheduled date and/or if Evander is unable to complete a scheduled installation or Services delivery in one continuous visit for reasons outside of its control, and is required to attend on subsequent occasions as a result, Evander will charge the installation fee in full and will also charge accordingly for additional visit(s).
- 3.8 Additional fees will also be charged by Evander for delays caused by others in the execution of installation and/or the delivery of the Services.
- 3.9 If Evander is required to manufacture and/or take delivery of materials to carry out the Services and there is any delay (not caused by Evander) to the timing for the delivery of the Services, Evander will charge the Customer for the storage of such materials until delivery of the Services can commence. The Customer will be responsible for the risk of any loss, damage or theft to such materials while they are being stored.

- 3.10 Without affecting any other rights it may have, Evander is entitled (both before and after any judgment) to charge interest at a rate of 8% per annum above the base rate from time to time of HSBC Bank plc on any overdue sums from the date payment was due until the date payment is received in cleared funds.

4 Terms and Warranties

- 4.1 These Terms apply to the Contract and Evander will not provide the Services on any other terms. Acceptance of the Services will be treated as acceptance of these Terms, whether or not express written acceptance is received by Evander from the Customer. These Terms will prevail unless expressly varied in writing and signed by an authorised signatory of Evander. Except as expressly stated in these Terms:
- 4.1.1 all other terms, conditions, representations or warranties whether oral or contained/referred to in any order, letter, form of contract, document or communication sent by the Customer to Evander are excluded; and
- 4.1.2 all terms, conditions, warranties, stipulations and statements that would otherwise be implied or imposed by statute, at common law, by a course of dealing or otherwise are excluded to the fullest extent permitted by law.
- 4.2 Any statement, description, representation, information, warranty, condition or recommendation contained in any catalogue, price list, advertisement or communication or made orally by any of Evander's employees or agents will not enlarge, vary or override these Terms. Unless otherwise stated in these Terms, any variation of the Contract will only be effective if it is in writing and signed by or on behalf of all parties. In the event of any conflict between the Terms and the Order Form the Terms will prevail.
- 4.3 Evander warrants that the installation of the Goods and delivery of the Services by Evander will be free from defects in workmanship for the period of 12 months after installation. Evander will use its reasonable endeavours to transfer the benefit to the Customer of any warranty provided by the third party supplier of any Goods. Unless otherwise specified on the Order Form, Evander does not provide for any retention or defects liability period. Evander will not provide any performance bond in respect of the Services.
- 4.4 Unless otherwise stated in these Terms, Evander does not give any warranties or assurances (either express or implied) as to the suitability or fitness of the Goods and/or Services for any particular purpose.

5 The Site

- 5.1 The Customer grants Evander (and any of its sub-contractors) a licence for the duration of the Contract to enter the Site at any time (with free, adequate, uninterrupted and unrestricted access, including adequate access ways suitable for Evander's vehicles) for the purpose of performing the Services. The Customer will ensure that the Site constitutes a safe place of work for Evander and its employees, agents, and sub-contractors and the Customer will indemnify Evander against all claims resulting from any failure by the Customer to comply with this obligation.
- 5.2 The Customer will notify Evander immediately if there are any changes made, or proposed to be made, to the Site which may affect the operation or delivery of the Goods and/or Services.
- 5.3 The Customer will provide Evander at no expense (unless otherwise agreed in writing on the Order Form) with any technical or essential facilities notified to it by Evander as being reasonably required for the delivery of the Services, including, but not limited to, a suitable safe and accessible power supply at such points and in such voltage as may be required.
- 5.4 The Customer will ensure that the Site has a clear and accessible working area for Evander to be able to deliver the Services in an uninterrupted and efficient manner (including ensuring that the Customer has deactivated any property alarms at the Site prior to Evander's arrival).
- 5.5 The Customer will provide Evander with not less than 72 hours' prior written notice (prior to the scheduled delivery date for the Services) of any of the following:

- 5.5.1 any permits or accreditations required for access to the Site;
- 5.5.2 any asbestos which is present at the Site;
- 5.5.3 any live or electrical cables in the area where Evander will be delivering the Services;
- 5.5.4 any relevant health and safety information (including, but not limited to, O&M manuals and asbestos register) for the Site; and/or
- 5.5.5 any other information or details about the Site which may impact the ability for Evander to deliver the Services at the Site and/or which are relevant to Evander from a health and safety perspective.

6 The Goods

- 6.1 Title to the Goods and materials used in the delivery of the Services shall not pass to the Customer until payment in full has been received for the Services. Until payment in full has been received for the Services, title to the Goods and materials used in the delivery of the Services remains with Evander and the Customer must not move, re-locate, dismantle, damage or interfere in any way with such Goods and materials.
- 6.2 Evander will not be liable to the Customer for any loss, theft, damage or breakage to the Goods or otherwise for the protection of the Goods:
 - 6.2.1 in the case of glass, once it has been glazed; and
 - 6.2.2 in the case of all other Goods, once the Goods have otherwise been fitted in position, and in each case the protection of the Goods (and liability for any loss, theft or damage to the Goods) will be the sole responsibility of the Customer from the point of arrival at Site.
- 6.3 Once Evander has ordered any custom Goods or materials (including, but not limited to, any Goods or materials which have been measured and specifically ordered for the Customer) the Customer must pay Evander in full for any such Goods and/or materials and for all ancillary and related costs (including council permits and specialist equipment hire), regardless of any variations or amendments which may be agreed between the parties after the date of the original order being placed by Evander.

7 The Services

- 7.1 Evander is under no obligation to accept a request for Services from the Customer and may, at its sole discretion and for any reason, refuse to accept any request for Services.
- 7.2 Evander may from time to time sub-contract some or all of its obligations under this Contract, including to Evander Partners. Any rights or limitations under the Contract applicable to Evander will also apply to any such sub-contractor.
- 7.3 Any amendments or variations to the agreed Services (including, but not limited to, any change in quantities of materials or scope of works) must be agreed in writing by both parties. The Customer will be required to reimburse Evander for any additional or consequential costs incurred with implementing any agreed variations.
- 7.4 In the event that Evander performs emergency boarding up services for the Customer, Evander will use all reasonable endeavours to ensure that such boarding is as secure as is reasonably possible in the circumstances, but Evander does not give any warranty or guarantee, whether express or implied, that the boarding will provide total security to the Site, and no liability for any loss or damage whatsoever caused to the Site (including to any materials or goods stored at the Site) or for any personal injury or damage caused by falling/dislocated boarding will be accepted by Evander. The Customer acknowledges and agrees that emergency boarding up is a temporary solution and does not provide security to a Site. In addition, the Customer acknowledges and agrees that emergency boarding is a temporary solution only, and will not be effective and/or fitted securely if left in place for a prolonged period by the Customer (including through inclement weather) and accordingly Evander does not guarantee that it will remain fit for purpose. The Customer is solely responsible for any loss, theft or damage to the Site and accordingly must maintain appropriate insurance.

8 Limitations of Liability

- 8.1 Evander's total aggregate liability to the Customer in contract, tort (including negligence or breach of statutory duty), misrepresentation, restoration or otherwise arising in connection with the performance or contemplated performance of the services for any loss/damage/delay of any nature and however caused in connection with the Services set out in the Order Form is limited to and will not exceed the lower of: (i) the amount paid by the Customer for the Services; and (ii) £50,000. A higher limit of liability may be available upon request by the Customer, but subject in each case to: (i) negotiation on a case by case basis, (ii) receiving the approval of Evander's insurers; and (iii) agreement to this variation being documented in writing between Evander and the Customer.
- 8.2 Evander will not be liable to the Customer:
- 8.2.1 for any: economic loss; loss of profit, business, contracts, opportunity, revenues or anticipated savings; loss of or damage to the Customer's reputation or goodwill; loss of goods, data or information; special or indirect loss/damage; or consequential loss/damage;
- 8.2.2 to the extent that the value of the claim is capable of being recoverable by the Customer under the terms of an insurance policy (that it has or should have had in place) or has been or will be made good or compensated for without cost to the Customer (save for the payment by the Customer to its insurer of any excess or deductible under the applicable insurance policy).
- 8.3 The Customer and Evander agree that it is reasonable for Evander to limit its liability under these Terms and in connection with the Services, because:
- 8.3.1 the Customer is more familiar with the potential losses or liabilities in respect of any damage or losses to the Site and has the ability to obtain the appropriate insurance cover for the Site;
- 8.3.2 such losses would be disproportionate to the payments due to Evander under the Order Form and accordingly it would not be commercially reasonable for Evander to deliver the Services without limiting its liability; and
- 8.3.3 Evander cannot obtain unlimited insurance cover for its potential liability for the Services.
- 8.4 The limitations of liability referred to in these Terms apply to all liability including (without limitation) liability in contract, tort, negligence and liability for statements, misstatements, representations, misrepresentations and breach of statutory duty. However, nothing in these terms are intended to or will limit or exclude liability for death or personal injury arising from a person's negligence or any other liability beyond the extent to which it can lawfully be limited or excluded.
- 8.5 INDEMNITY FROM CUSTOMER: The Customer will indemnify Evander against all liabilities, costs, expenses, damages and losses (including, but not limited to, any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by Evander arising out of or in connection with any claim made against Evander by a third party arising out of or in connection with the provision of the Services (including any claim asserting that a duty of care is owed by Evander to the third party).

9 Termination

- 9.1 Evander may, without affecting its other rights or remedies, suspend delivery or performance of some or all of its current or future obligations under the Contract and/or at any time (regardless of any prior suspension) terminate the Contract with immediate effect by notice in writing:
- 9.1.1 if the Customer is in breach of any of its obligations under the Contract;
- 9.1.2 if the Customer makes or offers to make any arrangement or composition with its creditors;
- 9.1.3 if the Customer is declared or deemed to be bankrupt or insolvent;
- 9.1.4 if a petition for bankruptcy, winding-up or administration is presented in respect of the Customer and is not dismissed, withdrawn or otherwise disposed of within 14 days after service;

- 9.1.5 if a receiver, administrative receiver or administrator is appointed in respect of the Customer, its business, property or assets or any part of them;
- 9.1.6 if a resolution for winding up or appointment of an administrator or receiver is proposed or passed by the Customer; and/or
- 9.1.7 if in Evander's reasonable opinion the Customer is unable to pay its debts as they fall due.
- 9.2 Upon termination of the Contract for whatever reason and without affecting any other rights or remedies of either party:
 - 9.2.1 if the Contract is terminated because of the Customer's breach, the Customer agrees that any sums due and owing will immediately become due and payable on the date any notice of termination becomes effective;
 - 9.2.2 even though termination may occur before performance of some or all of the Services, the Customer agrees that any pre-paid charges will be non-refundable.
- 9.3 Expiry or termination of the Contract for whatever reason will not affect any rights, remedies or liabilities which have already accrued or any provisions of the Contract which are intended to continue to have effect after it has come to an end.
- 9.4 If the Customer seeks to terminate the Contract prior to completion of the Services, Evander will be entitled to charge the Customer for:
 - 9.4.1 all Services completed up to the date of termination;
 - 9.4.2 the cost for all Goods ordered by Evander (regardless of whether these have yet been installed); and
 - 9.4.3 all other ancillary costs and expenses incurred by Evander (including, but not limited to, specialist equipment hire and council permits).

10 Data Protection

- 10.1 In this clause 10, the terms "personal data", "process/processing", "data controller" and "data processor" will have the meaning as set out in the General Data Protection Regulation EU 2016/679 (GDPR) and the Data Protection Act 2018 and in any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK (the Data Protection Legislation).
- 10.2 The Customer acknowledges and agrees that:
 - 10.2.1 Evander will be the data processor for any personal data of the Customer under this Contract and the Customer will be the data controller for such data;
 - 10.2.2 Evander will be required to process limited personal data about the Customer and its employees, agents, sub-contractors and contractors to deliver the Services; and
 - 10.2.3 Evander may be required to share this personal data with third parties (including Evander's sub-contractors), in each case solely for the purposes of performing the Services.
- 10.3 By providing the personal data to Evander, the Customer confirms that it has received all necessary consents and permissions from the data subjects for the processing by Evander of their personal data, and will ensure that it has in place all necessary consents and notices to enable lawful transfer of the personal data to Evander. Evander will process the Personal Data in accordance with the terms of the privacy notice(s) available on its website, as may be updated or amended by Evander from time to time.

11 General Terms

- 11.1 Save in respect of payment obligations, neither party will be liable to the other party for any failure or delay in the performance of any obligation under the Contract to the extent to which performance of that obligation is prevented, frustrated, hindered or delayed as a direct result of any cause beyond the reasonable control of the party liable to perform it, including (but not limited to): natural disasters, pandemic, national emergencies, government intervention, civil

- disturbance, official or unofficial industrial action or breakdown of machinery.
- 11.2 The parties as stated in the Order Form are the only parties to the Contract and the Customer warrants that it is not acting as an agent for any other person in respect of the Services. A person who is not a party to the Contract does not have the right to enforce any of its terms under the Contracts (Rights of Third Parties) Act 1999.
- 11.3 Each party will, unless otherwise required by law:
- 11.3.1 only use/disclose the Confidential Information supplied by the other party for the purposes or its rights and obligations in connection with the Contract; and
- 11.3.2 take all reasonable steps (including the insertion of relevant clauses in its contracts of employment and contracts for services) to safeguard and protect the other party's Confidential Information which it receives, from unauthorised use, disclosure or access. These restrictions do not apply to any information which: (a) is, prior to it being provided, or subsequently becomes public knowledge other than through a breach of this clause; (b) can be shown by the party intending to disclose the information, to have been known to it, free from any obligation of confidence, prior to it being provided in connection with the Contract; or (c) is used or disclosed with the other party's consent.
- 11.4 The Contract is the entire agreement between the parties in respect of its subject matter and is governed by English law. The parties agree to submit to the exclusive jurisdiction of the English courts.

12 Additional terms – Specialist Installations

- 12.1 The terms of this clause 12 will apply in addition to clauses 1 to 11 in respect of any Order Forms for specialist installations services or projects.
- 12.2 Where any installation continues over a calendar month end, Evander will invoice for Services completed up until the month end on a pro-rata basis.