

CONDITIONS OF SALE OF ESQUIRE GLASS (MANCHESTER) LIMITED

1 Definitions

- 1.1 Seller means Esquire Glass (Manchester) Limited (Company Number 981564).
- 1.2 Buyer means the person, firm or company placing an order with the Seller.
- 1.3 Goods means all those goods and materials which are the subject of the Buyer's order and which are to be supplied to the Buyer by the Seller under these Conditions.
- 1.4 Conditions means the terms and conditions set out below.
- 1.5 Contract means the contract for the supply of Goods formed by the Seller's acceptance (which, however made or communicated, shall be deemed made subject to these Conditions) of the Buyer's order.

2 Formation of Contract

- 2.1 All Goods sold by the Seller are sold subject to these Conditions and these Conditions shall be the sole terms and conditions of any sale by the Seller to the Buyer. Terms and conditions on the Buyer's order form or other similar document shall not be binding on the Seller and the placing of an order for or the acceptance of the Goods by the Buyer shall indicate unqualified acceptance of these Conditions.
- 2.2 No representative, agent or sales person has the Seller's authority to vary, amend or waive any of these Conditions on behalf of the Seller and no amendment or addition to any of these Conditions shall be deemed to have been accepted unless accepted in writing by the Seller.

3 Quotations

The prices, quantities and delivery times stated in any quotation are not binding on the Seller. They are commercial estimates only which the Seller will make all reasonable efforts to achieve.

4 Specifications

All drawings, photographs, illustrations, dimensions, weights and other technical information and particulars of the Goods and any sample books are given by the Seller in the belief that they are as accurate as reasonably possible but are not to be treated as binding or as forming part of the Contract.

5 Orders and delivery

- 5.1 Notwithstanding that the Seller may have given a detailed quotation no order shall be binding on the Seller unless and until it has been accepted in writing by the Seller.
- 5.2 Unless otherwise agreed, delivery of Goods within the UK will be made at the cost of the Buyer to the address specified in the Buyer's order by any method of transportation regarded as suitable by the Seller at its discretion and delivery of Goods destined for export outside the UK will be as stated in the Contract.
- 5.3 Although the Seller will use all reasonable efforts to meet delivery dates, it shall not be liable to the Buyer for any loss or damage, whether direct, indirect or consequential if it is delayed or prevented, in whole or in part, from delivering the Goods.
- 5.4 If the Buyer refuses or fails to take delivery of the Goods on the date of delivery, risk in the goods shall pass to the Buyer, the goods shall be deemed to have been delivered, the Seller will be entitled

CONDITIONS OF SALE OF ESQUIRE GLASS (MANCHESTER) LIMITED

at its discretion to store the Goods and the Buyer shall in addition to the price payable under clause 7 pay all costs and expenses of such storage and any additional costs of carriage incurred.

- 5.5 The Buyer shall provide (at the location where delivery is to take place) and at its expense adequate and appropriate equipment and manual labour for taking delivery.
- 5.6 The Seller reserves the right to deliver in instalments at its discretion.
- 5.7 The Buyer shall accept the supply of such quantity of the Goods (whether more or less) as reasonable approximates the stipulated amount of the Buyer's order and a pro-rata adjustment to the total price shall be applied.
- 5.8 All Goods must be inspected by the Buyer immediately on delivery. If any Goods are damaged or lost or if (subject to clause 5.7) there has been short delivery, the Buyer must endorse the consignment note accordingly and submit a detailed written claim to the Seller or the carrier within 3 days of delivery of the Goods and, in the case of a claim against a carrier, supply a copy of such claim to the Seller within 7 days of delivery of the Goods. The Buyer's signature on the consignment note without any such endorsement shall release the Seller from any liability in respect of damage or loss in transit or short delivery.
- 5.9 Each instalment shall constitute a separate contract and shall be paid for accordingly.
- 5.10 The Buyer shall have no right to cancel any order. In the event that an order is cancelled, the Buyer shall immediately pay to the Seller the full order value of the Goods.
- 5.11 If the Buyer shall fail to pay the price for any Goods on the due date, the Seller shall be entitled to suspend any delivery of any other order under these conditions or any other contract until the Seller has been paid all sums then outstanding together with the price of Goods ordered but not yet delivered under this or any other contract.
- 5.12 If the Seller gives written notice to the Buyer that a delivery has been suspended under clause 5.11 and the Buyer does not, within fourteen (14) days, pay all sums then outstanding, the Seller shall be entitled to treat such non-payment as repudiation of any or all contracts between the parties for the supply of goods and, upon acceptance of such repudiation, any and all outstanding orders shall be treated as cancelled by the Buyer and the Seller may claim payment for all sums due for delivered Goods and cancelled orders under this or any other contract.
- 5.13 All referred or returned payments will be subject to our standard charge to cover bank administration cost.

6 Risk

- 6.1 Except as otherwise provided in these Conditions, the risk of loss or damage to the Goods shall pass to the Buyer upon delivery of the Goods in accordance with clause 5.2.
- 6.2 In the event that the Buyer instructs the Seller to deliver the Goods to a third party (including but not limited to a designated carrier), the risk of loss or damage to the Goods shall pass to the Buyer upon delivery of the Goods to such third party.

7 Price

- 7.1 The price payable for the Goods shall be as stated in the Seller's price list (or quotation relating to the Goods) unless otherwise stipulated in writing by the Seller but the Seller reserves the right to alter its prices without prior notice to the Buyer.

CONDITIONS OF SALE OF ESQUIRE GLASS (MANCHESTER) LIMITED

- 7.2 Except where otherwise stated, the price is exclusive of the cost of delivery in accordance with clause 5.2 and exclusive of Value Added Tax, customs duties and all other taxes, duties and expenses in respect of the Goods all of which shall be added to the price for the Buyer's account unless otherwise stipulated in writing by the Seller.

8 Payment

- 8.1 The Seller shall be entitled to invoice the Buyer upon delivery. If delivery is made in instalments, the Seller shall be entitled to invoice the Buyer upon delivery of each instalment.
- 8.2 Unless otherwise agreed in writing, payment will be due thirty (30) days from the date of invoice for the goods. Invoices will be dated with the date of delivery or attempted delivery.
- 8.3 If payment is not made when due then the Seller may, without prejudice to its other rights, charge interest at an annual rate of four (4) per cent above the current base rate of The National Westminster Bank Plc to be calculated on a day to day basis on the balance outstanding until payment is made in full.
- 8.4 The Buyer shall not purport to set off or withhold any payments claimed or due to the Seller under this or any other contract.
- 8.5 Without prejudice to any other rights the Seller may have pursuant to this clause 8 the Buyer agrees to indemnify the Seller for all reasonable costs (including, but not limited to, legal fees) the Seller incurs in recovery or attempted recovery of outstanding monies due to the Seller.

9 Title and lien

- 9.1 The Seller shall retain title to and ownership of the Goods until it has received payment in full of all sums due for all Goods supplied to the Buyer plus any interest payable under clause 8.3. If payments received from the Buyer are not stated to refer to a particular invoice the Seller may appropriate such payments to any outstanding invoice.
- 9.2 If any of the Goods owned by the Seller are attached to, mixed with or incorporated into any other goods not owned by the Seller so that the Goods in question are not separate from the resulting composite or mixed goods, then immediately upon manufacture all such composite or mixed goods shall belong to the Seller absolutely and not by way of charge until the Goods have been paid for in full or until the Seller recovers possession of and resells sufficient of the composite or mixed goods to discharge the purchase price in full and the Seller's costs recovered, any excess to be accounted for to the Buyer.
- 9.3 Until payment of the purchase price the Buyer shall be the bailee of the Goods for the Seller and the Goods shall be stored separately from any Goods which belong to the Buyer or any third party, and shall be clearly marked and identifiable as being the Seller's property.
- 9.4 The Seller hereby licences the Buyer to sell, as the Seller's agent and bailee, Goods which belong to the Seller. All monies received from any such sale shall be held on trust to settle any sums due in respect thereof to the Seller and pay any balance to the Buyer. Such monies shall be placed to the credit of a separate fiduciary bank account which shall not be permitted to become overdrawn and shall not be released to the Buyer until payment for the Goods has been received.
- 9.5 If the Buyer fails to make any payment to the Seller when due, compounds with its creditors, executes an assignment for the benefit of its creditors, has a bankruptcy order against it or, being a company, enters into voluntary or compulsory liquidation or has an administrator or administrative receiver or receiver appointed over all or part of its assets or takes or suffers any similar action in

CONDITIONS OF SALE OF ESQUIRE GLASS (MANCHESTER) LIMITED

consequence of debt or becomes insolvent or if the Seller has reasonable cause to believe that any of these events is likely to occur, the Seller shall have the right, without prejudice to any other remedies:

- 9.5.1 to enter without prior notice any premises where Goods owned by it may be, and to repossess and dispose of any Goods owned by it so as to discharge any sums owed to it by the Buyer under this or any other contract and a licence is hereby granted irrevocably to the Seller and its representatives to enter the Buyer's premises where the Goods are being kept to remove the Goods,
- 9.5.2 to require the Buyer not to resell or part with possession of any Goods owned by the Seller until the Buyer has paid in full all sums owed by it to the Seller under this or any other contract,
- 9.5.3 to withhold delivery of any undelivered Goods and stop any Goods in transit.

Unless the Seller expressly elects otherwise, any contract between it and the Buyer for the supply of Goods shall remain in existence notwithstanding any exercise by the Seller of its rights under this clause 9.

- 9.6 The Goods shall, once the risk has passed to the Buyer in accordance with clause 6 or otherwise, be and remain at the Buyer's risk at all times unless and until the Seller has retaken possession of them, and the Buyer shall insure accordingly. Until such time as payment for the Goods has been made in full, any money received by the Buyer as a result of any insurance claim of whatever nature with regard to the Goods shall be held on trust for the Seller as if it were proceeds of the sale of the Goods and shall be immediately remitted to the Seller.
- 9.7 The Seller shall have a lien over any assets of the Buyer in its possession against payment in full of all sums due now or in the future to the Seller by the Buyer on any account whatsoever.

10 Warranty

- 10.1 The Seller warrants that at the time of delivery and/or for a 6 month period thereafter the Goods will be of satisfactory quality and free from defects in materials and workmanship and the Seller will at its option refund the purchase price of or repair or replace free of charge any Goods which its examination confirms are defective provided:
 - 10.1.1 the Buyer makes a full inspection of the Goods immediately upon delivery;
 - 10.1.2 the Buyer notifies the Seller forthwith of any defects which it discovers;
 - 10.1.3 the Buyer has used the Goods in accordance with any instructions or recommendations of the Seller;
 - 10.1.4 save for any necessary and careful installation, the Goods have not been adjusted, altered, adapted or repaired by any party other than the Seller;
 - 10.1.5 the Goods are either made available to the Seller for inspection or returned to the Seller at the Buyer's own expense, as the Seller may request; and
 - 10.1.6 the defect does not arise from a design or specification supplied by the Buyer.
- 10.2 The Seller shall be under no liability under the above warranty if the total price for the Goods has not been paid on or before the due date.

CONDITIONS OF SALE OF ESQUIRE GLASS (MANCHESTER) LIMITED

- 10.3 In no circumstances shall the Seller's liability to the Buyer exceed the price paid for the Goods with respect to which a claim is made.
- 10.4 Except as provided for in these Conditions, there are no warranties, express or implied, of merchantability or of fitness for a particular purpose, or of any other kind except as to title. In particular, all conditions and warranties which would otherwise be implied by statute or under the common law are hereby excluded to the fullest extent permitted by law.

11 Liability

- 11.1 The Seller shall under no circumstances be liable for any indirect, special or consequential loss (including loss of business and/or anticipated profit or third party claims) howsoever arising either from breach or non-performance of any of its obligations under the Contract or from the supply of or intended use of the Goods, even if the Seller has been advised of the possibility of such potential loss, except that the Seller shall be liable for loss arising from death or personal injury resulting from the proven negligence of the Seller and except that nothing in these Conditions shall have the effect of excluding or limiting liability under the Consumer Protection Act 1987 to a person who has suffered damage caused by a defective product, or to a dependent or relative of such person.
- 11.2 The Buyer shall fully indemnify the Seller in respect of all actions, suits, claims, demands, costs, charges or expenses arising from damage to or destruction of property, personal injury or death whether caused by the negligence of the Seller, its servants, agents or subcontractors in executing the Contract or howsoever caused, provided that the Buyer shall not be liable to indemnify the Seller in respect of any action, suit, claim, demand, cost, charge or expense arising from personal injury or death caused by the proven negligence of the Seller.
- 11.3 In the event that the Goods are based on a design or specification supplied by the Buyer, the Buyer shall fully indemnify the Seller in respect of all actions, suits, claims, demands, costs, charges or expenses arising from any claim by a third party in respect of such Goods (whether such claim relates to intellectual property rights, infringement, personal injury or otherwise) to the extent that the actions, claims, demands, costs, charges or expenses relate to the design of the Goods.
- 11.4 All recommendations and advice given by or on behalf of the Seller to the Buyer as to methods of storing, using or applying the Goods, the purposes for which the Goods may be applied and the suitability of using the Goods in any manufacturing process or in connection with any other materials are given without liability on the part of the Seller.
- 11.5 The Seller makes no representation or warranty that use of the Goods does not infringe the rights of any third party and the Seller accepts no liability in this respect.

12 Termination

Should the Buyer make default in any payment or otherwise be in breach of its obligations to the Seller under the Contract or under any other contract with the Seller or compound with or execute an assignment for the benefit of its creditors or commit any act of bankruptcy or being a company enter into voluntary or compulsory liquidation or suffer a receiver or administrative receiver or administrator to be appointed over all or any part of its assets or take or suffer any similar action in consequence of debt or become insolvent or should the Seller have reasonable cause to believe that any of these events is likely to occur, the Seller may, by notice in writing to the Buyer, without prejudice to any other rights, forthwith suspend or cancel any uncompleted part of the Contract or stop any Goods in transit or require payment in advance or satisfactory security for further deliveries under the Contract.

13 Force majeure

CONDITIONS OF SALE OF ESQUIRE GLASS (MANCHESTER) LIMITED

The Seller shall not be liable to the Buyer for any loss or damage caused to or suffered by the Buyer as a direct or indirect result of the supply of the Goods by the Seller being prevented, restricted, hindered or delayed by reason of any circumstances outside the control of the Seller including, without limitation, circumstances affecting the provision of all or any part of the Goods by the Seller's usual source of supply or delivery or by the Seller's normal route or means of delivery.

14 Waiver

The failure of the Seller to insist upon the strict performance of any of the terms and conditions of the Contract shall not be construed as a waiver of any such term or condition and shall in no way affect the Seller's right to enforce such provision later.

15 Severability

If any of the terms and conditions of the Contract (or part thereof) shall be found to be invalid, ineffective or unenforceable, the invalidity, ineffectiveness or unenforceability of such term or condition (or part thereof) shall not affect any other term or condition (or the other part of the term or condition of which such invalid, ineffective or unenforceable part forms part) and all terms and conditions (or parts thereof) not affected by such invalidity, ineffectiveness or unenforceability shall remain in full force and effect.

16 Governing law

The construction, validity and performance of the Contract shall be governed by English law and by entering into the Contract the parties submit to the jurisdiction of the English courts.