

PILKINGTON UNITED KINGDOM LIMITED GENERAL CONDITIONS OF SALE

1 APPLICATION AND VARIATION OF THESE CONDITIONS

Unless otherwise expressly agreed in writing by the Seller, these Conditions apply to any contract between Pilkington United Kingdom Limited (the Seller) and the Buyer for the supply of goods ("Contract") and supersede any earlier Conditions issued by the Seller and shall override any terms or conditions of the Buyer. These Conditions are open to negotiation before the Buyer's order is accepted (whether or not in writing) by the Seller, which negotiation may result in change to any price published or earlier referred to.

2 PRICES

Prices are subject to withdrawal without notice, and unless agreed otherwise in writing, goods will be invoiced at the prices ruling at the date of delivery. There are minimum area and shape charges which vary according to the goods ordered and shall be notified to the Buyer as appropriate. Prices quoted are exclusive of VAT. In addition to the price, an energy surcharge shall be payable. The circumstances in which an energy surcharge is payable and the amount thereof can be obtained from Seller on request.

3 PAYMENT

- (a) Time of payment shall be of the essence of any Contract. For an account holding Buyer payment is due on or before the last day of the month next following the month in which despatch is made unless otherwise agreed. If the Buyer makes default on payment, payment in respect of all goods delivered but not paid for shall immediately become due and payment in respect of any goods delivered during the continuance of any such default shall become due immediately upon delivery.
- (b) Non account holding Buyers will be required to pay the whole purchase price of the goods before the goods are manufactured and/or delivered.
- (c) Any previously agreed prompt payment discount will only be allowed provided that no payments required of the Buyer in respect of any Contract are overdue.
- (d) Interest shall be payable on overdue payments in accordance with the Late Payments of Commercial Debts (Interest) Act 1998.
- (e) No retentions are permissible and the Buyer has no right to set off disputed moneys whether or not in respect of goods under any Contract to which these Conditions apply.
- (f) The Seller may at any time suspend the performance of its obligations under any Contract until the Seller is satisfied that the Buyer is able to pay, or has given security for payment, for the goods.
- (g) We will send account holding Buyers a statement at the end of each month where deemed appropriate but, in any event, at intervals of no more than three months when they have purchased any goods from the Seller. Buyers will be required to pay the due balance shown on each statement in one payment within the period specified on the invoice.

4 TITLE

- (a) Notwithstanding delivery and the passing of risk in the goods, or any other provision of these Conditions, the property in the goods shall not pass to the Buyer until the Seller has received in cash or cleared funds, payment in full of the price of the goods and all other goods agreed to be sold by the Seller to the Buyer for which payment is then due.
- (b) Until such time as the property in the goods passes to the Buyer, the Buyer shall hold the goods as the Seller's fiduciary agent and bailee, and shall keep the goods separate from those of the Buyer and third parties and properly stored, protected and insured and identified as the Seller's property. Until that time the Buyer shall be entitled to resell or use the goods in the ordinary course of its business, but shall account to the Seller for the proceeds of sale or otherwise of the goods, whether tangible or intangible, including insurance proceeds, and shall keep all such proceeds separate from any moneys or property of the Buyer and third parties and, in the case of tangible proceeds, properly stored, protected and insured.
- (c) Until such time as the property in the goods passes to the Buyer (and provided the goods are still in existence and have not been resold), the Seller shall be entitled at any time to require the Buyer to deliver up the goods to the Seller and, if the Buyer fails to do so forthwith, to enter upon any premises of the Buyer or any third party where the goods are stored and repossess the goods.
- (d) The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the goods which remain the property of the Seller, but if the Buyer does so all moneys owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.
- (e) In the event that goods are supplied on different dates, and covered

by separate invoices, some of which have been paid for and some of which have not, it shall be presumed that the Buyer has used the goods which have been paid for before the goods for which payment has not been made.

5 DELIVERY AND RISK

- (a) Delivery shall unless otherwise agreed, be at the Buyer's normal place of business. The Seller reserves the right to choose the form of transport for the goods and the composition of the consignment load.
- (b) Any time specified for delivery is given as an estimate only and shall not constitute a contractual obligation. No loss or damage shall be attributed to any delivery that has not been effected by any such date.
- (c) Where the Buyer fails or declines to take delivery of goods on the date specified for delivery or if no date is specified when goods are ready and available for delivery, then the Seller may give 7 days notice to the Buyer upon expiration of which the goods shall be deemed to have been despatched and delivered for the purpose of clause 3(a), 3(b) and 5(g) and Seller may additionally charge Buyer for any reasonable storage or additional transport costs which result.
- (d) If the Buyer establishes to the satisfaction of the Seller (acting reasonably) that goods have been damaged in transit or that the consignment of goods is incomplete or incorrect and the Buyer has given the Seller written notification (other than on the carrier's delivery document) of such damage or shortage within 3 days of delivery, the Seller will replace such goods or credit the Buyer with the value thereof. The Seller shall be permitted a reasonable opportunity to inspect any damaged consignment.
- (e) Where delivery is to be made by transport other than the Seller's own carrier, the failure of goods to arrive within 14 days of receipt by the Buyer of the advice note, must be reported to the Seller within the said period of 14 days failing which, the Seller shall have no liability for non-delivery.
- (f) Except as provided in Clause 5(d), the Seller shall have no liability to the Buyer arising out of or in connection with damage to, or incomplete, or incorrect consignments of goods.
- (g) When the goods or any number of them (whether or not being in the actual quantity ordered) are either collected by the Buyer from the Seller's premises or are free of all vehicle transit restraints and ready for unloading by the Buyer at the agreed delivery address, delivery in relation to those goods is complete and the risk in them shall pass to the Buyer.
- (h) On arrival of the goods at the place of delivery the Buyer shall promptly provide unloading facilities and when the goods are ready to be unloaded shall unload the goods promptly. The Seller shall be entitled to recover from the Buyer all and any costs and expenses incurred as a result of the Buyer's failure so to do. Any assistance given in respect of any unloading and any unloading carried out by the Seller or its agents' (including the positioning of goods on Buyer's storage equipment) is entirely at the Buyer's own risk. The use of any distribution equipment within or outside Buyer's premises following unloading is at Buyer's risk.
- (i) The Seller shall have no liability for any loss or damage to goods in transit when the Buyer has signed the delivery note or, other delivery documents as received in good condition.
- (j) Pallets, frames, stillages and all other distribution equipment are the property of the Seller and must be returned to the Seller on demand. Should Buyer fail to return any distribution equipment within 7 days following such demand, a charge at the rate of £50 plus VAT per week for each item of distribution equipment retained thereafter will be incurred. Use of distribution equipment for any purpose other than carriage and storage of glass supplied by the Seller is prohibited.
- (k) The Buyer shall not be entitled to reject any goods on the grounds that they have been delivered in incomplete quantities.

6 WARRANTIES, LIABILITIES AND STANDARDS

- (a) The Seller warrants to the Buyer that goods shall conform to appropriate product published by the European Committee for Standardization or British Standards Institute (where applicable), or otherwise to recognised industry standards defined and published by the Glass and Glazing Federation, 54 Ayres Street, London, SE1 1EU. www.ggf.org.uk
- (b) Seller's Standard Five Year Warranty in the format current at the date of the relevant Contract shall apply to insulating glass units.
- (c) Save as expressly provided by these Conditions, or as expressly provided in any specific written warranty issued by the Seller, or as otherwise specifically agreed in writing by the Seller, all Seller's representations and statements (whether express or implied) and all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

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- (d) Goods represented by the Buyer to be defective shall not, save as expressly provided for in these Conditions, or in any specific written warranty issued by the Seller, form the subject of any claim for injury, loss, damage or any expense howsoever incurred whether arising directly or indirectly from such alleged defects other than death or personal injury resulting from the Seller's negligence; but such goods, if demonstrated by the Buyer to be in breach of the Seller's warranties set out in clause 6(a), will at the discretion of the Seller, be replaced free of charge or credited to the account of the Buyer, but the Seller will have no further liability to the Buyer.
- (e) Except in respect of death or personal injury caused by the Seller's negligence the Seller shall not be liable to the Buyer for any indirect, special or consequential loss or damage (whether for loss of profit or otherwise) which arise in connection with the supply of goods or their use or resale by the Buyer.
- (f) Optical, dimensional, other physical properties and colour of the goods are subject to the Seller's manufacturing specifications, tolerances and/or standards, details of which are available on request.
- (g) Specification of the correct glass in accordance with British Standard 952 Glass for glazing Parts 1 and 2 and British Standard Code of Practice BS 6262 (Glazing for buildings), the relevant harmonized European product standard and/or other statutory requirements is the responsibility of the Buyer. Where the goods ordered appear to contravene a relevant Code of Practice or British Standard the Seller reserves the right to substitute goods which meet the requirements and charge accordingly.
- (h) The Buyer shall be responsible for the correct use and/or installation of the goods and indemnify the Seller in respect thereof. The Seller accepts no liability for loss or damage resulting from failure to adhere to recommendations and guidelines laid down in its current technical literature and/or that of the said Glass and Glazing Federation.
- (i) The Seller's warranties in clauses 6(a) and 6(b) are subject to Seller receiving payment in full for the goods on or before the due date. In the event that such payment is not received by such time said warranties shall be null and void unless and except to the extent that Seller, at its absolute discretion, may otherwise expressly permit in writing.
- (f) goes or is put into liquidation (other than solely for amalgamation or re-construction), or passes a resolution for winding up (otherwise than for the purposes of a bona fide scheme of solvent amalgamation or reconstruction) or a petition is presented (other than a petition which in the opinion of the Seller is frivolous or vexatious and which is withdrawn or stayed within 14 days) or any order is made by any competent court for the winding up, dissolution or appointment of a liquidator of the Buyer, or if an administrative receiver or administrator is appointed over the whole or any part of the Buyer's business, or if a petition or other form of application for an administration order is presented or made to the Court or notice of intention to appoint such an administrator is given or filed at court or
- (g) ceases or threatens to cease to carry on the whole or a substantial part of its business or
- (h) dies or is dissolved or Buyer suffers any analogous proceedings to those set out in this clause,

Then the Seller may, without prejudice to any rights which may have accrued or which may accrue to it, at its option; (i) require payment in advance for all or any prior, existing and/or further deliveries; and/or (ii) suspend any further deliveries until such default or breach, if capable or rectification, is rectified, and/or (iii) terminate the relevant Contract; and/or (iv) terminate any other Contracts so far as any goods remain to be delivered thereunder.

9 MISCELLANEOUS

- (a) Any quotation given by the Seller is not an offer.
- (b) If material or goods are ordered to be supplied to a template and the template dimensions differ from those specified in associated documents or correspondence, the order will be executed to the dimensions of the template. Templates must always be of a rigid material.
- (c) In accordance with trade custom, Buyer's glass is handled, stored and processed at the Buyer's own risk.
- (d) Information and illustrations in the Seller's printed literature are approximate representations not binding in detail. The Seller reserves the right to change specifications and other information in its literature and the Buyer must satisfy itself that the current stocks of goods are as depicted in any literature.
- (e) Any Contract or order to which these Conditions relate is between the Seller and the Buyer as principals and is not assignable by the Buyer without the express written consent of the Seller.
- (f) Unless expressly agreed otherwise in writing, (i) any Contract or order may be assigned by the Seller to any of the Seller's associated companies and/or (ii) the Seller may manufacture the goods at any of its works or plants and/or (iii) the Seller may sub-contract the manufacture and/or supply of the goods. For the purpose of this sub-clause an associated company of the Seller shall mean a company which is a subsidiary company of Pilkington Group Limited.
- (g) The Seller may assign its right to receive any payments from the Buyer.
- (h) Where goods are manufactured and/or processed by the Seller in accordance with the Buyer's specification the Buyer shall indemnify the Seller in respect of any liability incurred by the Seller in respect of any infringement or alleged infringement of any patent, design, copyright, trademark, or other intellectual property of any third party.

10 GOVERNING LAW

These Conditions and any Contract arising hereunder shall in all respects be construed in accordance with English Law and the Buyer agrees to submit to the non-exclusive jurisdiction of the English Courts.

11 GENERAL

The completion or termination of any relevant Contract shall not affect the continuing operation of Clauses 4, 5(j) and 10.

7 FORCE MAJEURE

- (a) If the performance of any Contract or any obligation thereunder is prevented by force majeure, the Seller shall be excused performance, provided that the Seller shall use reasonable endeavours to remove such cause(s) of non-performance, and shall continue performance thereunder without delay whenever such cause(s) are removed.
- (b) For the purposes of these Conditions, the term "Force Majeure" includes, without limitation, acts of God, strikes, lock-outs, other industrial action, fire, accident, lightning, earthquakes, storms, floods, explosion, war and any other circumstances, whether similar or dissimilar, beyond the reasonable control of the Seller.

8 TERMINATION

If the Buyer;

- (a) makes default in any payment, or
- (b) commits any breach of the terms and conditions of any relevant Contract, or
- (c) suffers distress or execution, or becomes insolvent as set out in section 123 of the Insolvency Act 1986 or
- (d) is (or is deemed to be) unable to or admits inability to pay its debts as they fall due or takes steps to obtain a moratorium, or commits an act of bankruptcy, or
- (e) enters into any arrangement or composition with its creditors or proceedings are commenced in relation to Buyer under any law regulation or procedure relating to reconstruction or adjustment of debts or

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