

1. Definitions

1.1 In these Conditions the following words shall have the meaning set out opposite them:

“Company” means Tradesmith Ltd.

“Customer” means any person, firm, company or organisation from whom or from which the Company accepts a Purchase Order to buy the Goods.

“Goods” means any goods which are the subject matter of the Purchase Order.

“Purchase Order” means an order placed by a Customer on the Company.

“Acknowledgement of Order” means the Company’s written acknowledgement of the Purchase Order, incorporating these terms and conditions.

1.2 Any quotations issued by the Company are not binding until the Company's official Acknowledgement of Order has been issued to the Customer.

2. General

All Purchase Orders for the supply of Goods by the Company are made subject to these terms and conditions and supersede any earlier set of terms and conditions issued by the Company. Any stipulation or condition contained in any of the Customer’s contractual documentation delivered to the Company which would conflict with these terms and conditions, or in any way qualify or nullify any of these terms and conditions shall be deemed to be inapplicable to the Company unless the same shall have been expressly agreed in writing in a document signed by an authorised representative of the Company. No other employee or agent of the Company has any authority to alter or qualify these terms and conditions in any way.

3. Specifications, Promotional Literature

All promotional literature and drawings provided by the Company or any of its suppliers are for general guidance only. Their contents do not bind the Company in any way unless specifically referred to in writing by the Company in its Acknowledgement of Order.

4. Acceptance and Cancellation

- 4.1 The Company reserves the right to withdraw a quotation at any time without notice and without providing a reason. Furthermore, the Company reserves the right to refuse to supply a quotation at any time without providing a reason.
- 4.2 Unless withdrawn in accordance with clause 4.1, all quotations are open to the Customer for acceptance for [30] days only, commencing on the date stipulated on the quotation. All quotations, once accepted by the Customer, remain subject to the Company providing an Acknowledgement of Order.
- 4.3 The Company reserves the right to cancel any incomplete order, or suspend delivery, if the Customer fails to observe or perform any obligation on the part of the Customer to be observed and performed or if the Company reasonably believes that in all the circumstances that the Customer may do so.

5. Pricing

- 5.1 All prices in the Company's price lists and promotional literature are subject to alteration or withdrawal without notice.
- 5.2 The prices stated in the Acknowledgement of Order are based on costs prevailing at the date of quotation. If between that date and the date on which the Goods are dispatched variations occur to such costs due to any delays re-requested by the Customer resulting in the Company suffering material or labour cost increases prior to delivery the Company reserves the right to amend the prices and invoice the Goods at the Company’s prices current on the date of dispatch.
- 5.3 All prices are quoted [exclusive] of value added tax (“VAT”) and any other applicable tax relating to the sale or delivery of the Goods.

6. Payment

- 6.1 Unless agreed in writing by the Company the Customer shall pay for the Goods, in full, on delivery.
- 6.2 The Company reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.
- 6.3 Time for payment shall be of the essence.
- 6.4 No payment shall be deemed to have been received until the Company has received cleared funds.
- 6.5 In the event of delivery being delayed at the request of the Customer the Company reserves the right to invoice the Goods when the due delivery date is reached. The relevant invoice being due for payment in accordance with clause 6.1.
- 6.6 No right for set-off shall exist in respect of claims by the Customer and the Customer shall not withhold all or part of the sum which has become due for payment under these terms and conditions.

7. Delivery or Collection

- 7.1 Unless otherwise specified in the Acknowledgement of Order the price includes delivery of the Goods in the [United Kingdom] to the address confirmed in the Acknowledgement of Order.
- 7.2 Delivery time shall never be of the essence of the contract and the Customer shall not be entitled to cancel in whole or in part or claim any damages on the grounds of delayed delivery.
- 7.3 The Goods shall be at the Customer's risk as soon as they have been delivered. All the labour for off loading and placing at the Customer's premises shall be the sole responsibility of the Customer.
- 7.4 The Company reserves the right to make charges for standing time awaiting off loading if the Company reasonably considers such times and circumstances to be excessive.
- 7.5 The Company reserves the right to use any method of transport for delivery.
- 7.6 A clear receipt for the Goods shall be sufficient evidence that the Goods have been delivered in good condition.
- 7.7 Where the Goods are at the Company's risk in transit, no claim by the Customer for damage to, or loss of, the Goods in transit will be entertained unless written notification is received by the Company within 5 working days of the date of delivery.
- 7.8 The Company reserves the right to deliver the Goods to the Customer in reasonable instalments.

8. Acceptance

The Customer shall inspect the Goods immediately on delivery and shall, within [14] days of the date of delivery, give notice to the Company of any matter or thing which the Customer alleges means that the Goods are not in accordance with the Purchase Order. If the Customer does not give any such notice in the 14 day period, the Goods shall be deemed accepted.

9. Title and Risk

- 9.1 The Goods are at the risk of the Customer from the time of delivery in accordance with clause 7.3.
- 9.2 If for any reason the Customer will not accept delivery of any of the Goods when they are ready for delivery, or the Company is unable to deliver the Goods on time because the Customer has not provided appropriate instructions, documents, licences or authorisations then:
 - 9.2.1 the Goods shall be deemed to have been delivered on the specified delivery date on the quotation or Acknowledgement of Order;
 - 9.2.2 risk in the Goods shall pass to the Customer at that time; and
 - 9.2.3 the Company may store the Goods until delivery and the Customer will be liable for all related additional costs and expenses (including, but not limited to, storage and insurance).
- 9.3 Title and property in the Goods (including full legal and beneficial ownership) shall not pass to the Customer until the Company has received in full (in cash or cleared funds) all sums due to it in respect of:
 - 9.3.1 the Goods; and
 - 9.3.2 all other sums which are or which become due to the Company from the Customer on any account or order; and
 - 9.3.3 all interest that has become payable in respect of the Goods or on any other sum which are or which become due under any other account or order.

- 9.4 Until ownership and title of the Goods passes to the Customer, the Customer must:
- 9.4.1 hold the Goods on a fiduciary basis as the Company's bailee;
 - 9.4.2 store the Goods (at no cost to the Company) separately from all other goods of the Customer or any third party in such a way that they remain readily identifiable as the Company's property;
 - 9.4.3 maintain the Goods in satisfactory condition and keep them insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company. On request the Customer shall produce the policy of insurance to the Company; and
 - 9.4.4 hold the proceeds of the insurance referred to in Clause 9.4.3 on trust for the Company and not mix them with any other money, nor pay the proceeds into an overdrawn bank account. Any account of monies by the Company in accordance with the terms of this Clause 9 received by the Company shall not discharge the Customer's liability to pay the price for the Goods plus any interest in accordance with Condition 4 but shall be set off against such liability.
- 9.5 The Customer may resell the Goods before ownership and title has passed to it solely on the following conditions:
- 9.5.1 any sale shall be effected in the ordinary course of the Customer's business at full market value; and
 - 9.5.2 any such sale shall be a sale of the Company's property on the Customer's own behalf and the Customer shall deal as principle when making such a sale.
- 9.6 The Customer's right to possession of the Goods shall terminate immediately if:
- 9.6.1 the Customer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed over all of its assets or undertakings or any part of the assets or undertakings, or a resolution is passed or a petition presented to any court for the winding up of the Customer or for the granting of an administration order in respect of the Customer, or the Customer proposes any of the above or the Company reasonably believes that any of the above is about to occur;
 - 9.6.2 the Customer ceases, or threatens to cease, trading; and
 - 9.6.3 the Customer encumbers or in any way charges any of the Goods.
- 9.7 The Company shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Company.
- 9.8 The Customer grants the Company, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Customer's right to possession has terminated, to recover the Goods provided that the Goods are still separate and clearly identifiable as the Company's.

10. Liability

- 10.1 The Company will only be liable for defects due to faulty materials or workmanship which may appear after delivery, as stated by the Company's guarantee statement, and subject to maintenance.
- 10.2 In the event of the Company being in default of clause 8.1 it shall in its sole discretion, either:
- 10.2.1 replace any defective Goods,
 - 10.2.2 remedy any defective Goods.
 - 10.2.3 refund the purchase price (if paid) in full, or in part having regard for the % of the Goods being defective, or the extent of any interference by the Customer.
- 10.3 Where glass defects are reported by the Customer the guidelines of the G.G.F and Pilkington United Kingdom Ltd. will be deemed the inspection criteria. The Company will not be liable for any reported defects which fall outside these guidelines.
- 10.4 All other warranties, conditions and other terms implied by statute or common law are, to the fullest extent permissible by law, excluded from these terms and conditions.
- 10.5 Nothing in these terms and conditions excludes or limits the liability of the Company for death or personal injury caused by the Company's negligence or fraudulent misrepresentation.
- 10.6 Subject to clause 10.2 the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, institution or otherwise, arising in connection with the performance or contemplated performance of the Purchase Order shall be limited to the total Purchase Order Price as confirmed by the Acknowledgement of Order.
- 10.7 Notwithstanding anything contained in these terms and condition, the Company shall not be liable for any indirect or special consequential loss or damage suffered or incurred by the Customer arising out of the Purchase Order. For the avoidance of doubt, indirect, special or consequential loss shall include, but not limited to, loss or damage, loss of profits, interest, business, goodwill, contracts, revenues or anticipated savings and the incurring liability for loss or damage suffered by third parties (including in each case incidental and/or punitive damages).

11. Force Majeure

- 11.1 The Company reserves the right to defer the date of delivery or to cancel the Purchase Order or reduce the volume of the Goods ordered if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Company including, but not limited to, act of God; war; threat or preparation for war; armed conflict; imposition of sanctions; embargo; breaking off of diplomatic relations and similar actions; terrorist attack; nuclear, chemical or biological contamination or sonic boom; riot; civil commotion; malicious damage; compliance with any law or governmental order, rule, regulation or direction; accident; breakdown of plant or machinery; fire; flood; storm; loss at sea; collapse of building structures; non-performance of suppliers or sub-contractors (other than by companies in the same groups as the party seeking to rely on this Clause); strikes; lock-out, labour disputes; and interruption or failure of utility services (including but not limited to gas, electricity and water).
- 11.2 If by any such circumstances set out in Condition 11.1 or otherwise, the Company is delayed, hindered or prevented from delivering all or part of the Goods, the Company will fairly apportion amongst all of its present contracted customers such of the Goods then available to the Company. Where the Company's obligations to supply have been suspended, normal supply shall resume as soon as is reasonably possible after the removal of the cause. In the event that the cause continues for more than [3] month(s) either party may terminate this Purchase Order on [5] working days notice.

12. Termination

- 12.1 Without prejudice to any other rights which the Company may have, the Company shall be entitled to terminate any Purchase Order with immediate effect, in whole or in part, upon the happening of the following events:
- 12.1.1 if the Customer becomes bankrupt or insolvent or unable to pay its debts in accordance with clause 9.6; or
 - 12.1.2 the Customer commits a material breach of its obligations and, if the material breach is capable of remedy, fails to remedy it within 14 days after being given written notice detailing the particulars of the material breach.
- 12.2 Notwithstanding and without prejudice to any other rights and remedies available, the Company shall have the right to terminate the Purchase Order in whole, or in part, at any time by giving written notice to the Customer whereupon all work being carried out to complete the Purchase Order shall be discontinued, and the Customer shall pay to the Company all properly supported direct costs and a reasonable amount of demonstrable overheads in accordance with generally accepted accounting principles.
- 12.3 Where the Company has issued confirmation of order and the customer subsequently cancels. The Customer will compensate the Company for all costs incurred up to the time of cancellation.

13. Assignment

Neither party may sub-contract or assign the Purchase Order in whole or in part to any person except with the prior written consent of the other party (such consent not to be unreasonably withheld or delayed), except that the Company may assign the Purchase Order in whole or in part, including all rights and obligations, at any time to a subsidiary (as defined in the Companies Act 2006) without the consent of the Customer.

14. Waiver

Waiver by the Company of a right or default under the Purchase Order shall not be deemed a waiver of any subsequent right or default whether of a similar nature or otherwise.

15. Severability

If any provision of these terms and conditions are found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void or voidable, unenforceable or unreasonable it shall, to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness, be deemed severable and the remaining provisions of these terms and conditions and the remainder of the provision shall continue in full force and effect.

16.Third Party Rights

A person who is not a party to this Agreement shall not have any rights under or in connection with it by virtue of the Contract (Rights of Third Parties) Act 1999 (as amended from time to time).

17.Entire Agreement

These terms and conditions constitute the entire understanding between the parties in respect of the subject matter and supersedes all prior representations, writings, negotiations or understandings and discussions between the parties relating to it.

18.Law and Jurisdiction

These terms and conditions shall be governed by and construed in accordance with the laws of England and Wales and shall be subject to the exclusive jurisdiction of the English Courts.