

# Epwin Glass

Specialist Building Products Ltd trading as Epwin Glass

## CONDITIONS OF SALE

### 1 General

- 1.1 In these Conditions of Sale “us” and “our” means Specialist Building Products Limited trading as Epwin Glass and “your” means the person, firm or company with whom we contract
- 1.2 These Conditions of sale apply to and govern any contract between ourselves to the exclusion of any other conditions contained on, or in, any letter, order form, receipt or similar document emanating from you. No variation of these Conditions of Sale shall be effective unless expressly agreed by us in writing.
- 1.3
  - i. An order by you in terms inconsistent with these conditions of sale shall not form part of any contract.
  - ii. Goods supplied under any order shall be invoiced at the prices contained in our price list current at the date of dispatch unless otherwise stated in writing by us.
- 1.4
  - iii. Except where otherwise stated in the contract or in our current price list all prices include the cost of packaging and delivery within the mainland United Kingdom (but not installation). We reserve the right to make additional charges if you require a method of packaging or delivery different to that normally employed by us or if delivery is to be made outside mainland United Kingdom.
  - iv. You shall, in addition to the net purchase price, pay to us the amount of any Value Added Tax or other sales tax at the rate in force at the time the goods are invoiced together with any relevant foreign currency and export and import duties and other costs incurred by us for deliveries outside the United Kingdom.

### 2. Payment

- 2.1
  - i. All goods will be invoiced at the time of, or soon after, dispatch. Payment for the goods will be due in sterling (without set off or counter claim) not later than the last day of the month following the date of the invoice. Time of payment is the essence in every contract. In addition to any other rights we may have, you shall be liable to pay interest on the amount due, calculated on a daily basis from the due date for payment until the actual date of payment at 3% above base rate of Barclays Bank PLC.
  - ii. In the event that you postpone delivery, or request that we suspend the manufacture of the goods, or fail to give us sufficient information to enable us to process any order, you shall be liable for any additional costs and expenses thereby incurred by us.
  - iii. If you pay any amount to us without apportionment between specific debts or liabilities, it shall be apportioned, as we think fit.

### 3 Illustrations & Dimensions

- 3.1
  - i. All descriptions, drawings, samples and other information contained in brochures, catalogues, price lists, advertising matter and other trade literature are therefore approximate only intended to indicate the general character of the goods.
  - ii. The dimensions of goods are subject to manufacturing tolerances customary within the trade. Dimensions contained in quotations, acknowledgements or orders or catalogues, price lists, advertising matter and other trade literature are therefore approximately only.
  - iii. All know-how, samples, models, designs, specifications, drawings, descriptions and similar items which we prepare relating to the goods or their development (and the copyright therein) shall remain our property and shall be returned by you on demand and shall be treated by you as confidential. They are prepared solely for our use or illustrative purposes and must not be copied, reproduced or disclosed to any third party without our prior written consent and we shall not accept any liability whatsoever for any loss, injury or death caused by any reliance upon them by you or any third party.

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## **4 Substituted Goods**

- 4.1 We reserve the right to substitute goods, which are similar to the goods ordered by you provided that such substituted goods are no less suitable for the purpose for which they are generally used than the goods ordered by you.

## **5 Cancellation**

- 5.1 You shall not cancel the contract without our consent which if given, shall be deemed to be on the express condition that you shall indemnify us against all loss, damage, claims, expenses and actions arising out of such cancellation unless otherwise agreed in writing.

## **6 Delivery**

- 6.1
- i. Delivery shall be to such place within mainland United Kingdom as specified by you in your delivery instructions or to your premises in the absence of such instructions.
  - ii. We reserve the right to make additional charges for deliveries made on your behalf to premises other than those belonging to you for packaging and delivery methods different from those normally employed by us.
  - iii. You shall be responsible for unloading the goods at the point of delivery and for loading and removal if the goods are collected by you or your carrier from our premises.
- 6.2 While we will use all reasonable endeavors to comply with any delivery date, we cannot be held responsible for any loss or damage whatsoever caused by late delivery and you shall not be entitled to reject goods for late delivery.
- 6.3 If the contract provides for delivery by installments the late delivery of one installment shall not entitle you to reject any other delivery under the same contract
- 6.4 If you fail to take delivery at the time required by the contract we shall be entitled without prejudice to any other rights we may have to treat the contract as at an end and to resell the goods or to invoice the goods in which event payment in full shall become due in accordance with the provisions of condition 2. In either case we shall be entitled to charge you at reasonable rates for the handling and storage of the goods from the date of the invoice to the date of eventual delivery to you or of disposal elsewhere.
- 6.5 Subject to our giving notice, we have the right to suspend delivery of goods when payment is overdue for goods previously supplied under this or any other contract.

## **7. Returnable Glass Barrow**

- 7.1 Returnable glass barrows in which goods are delivered are our property and will be charged to you unless they are returned to us no later than one month after the date of delivery, carriage paid, undamaged and in good condition.

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## 8. Risk

- 8.1 The risk in the goods contracted to be sold by us shall pass to you when the goods are delivered to you, save that where the contract is stated to be F.O.B. or C.I.F. then risk shall pass to you when the goods are delivered onto the ship or aircraft. Where goods are collected by you from our premises the risk shall pass to you once loaded onto your transport.
- i. Notwithstanding the passing of risk to you we retain ownership of the goods, the property in which shall not pass to you and you shall hold any goods delivered to you as a bailee for and on behalf of us until we have received full payment of the price of all goods (whether or not the goods are delivered in installments and some have been paid for by you) and all other sums due at any time whatsoever from you to us.

Until ownership of the goods has passed to you, you:

- i. shall insure the delivered goods against loss or damage with an insurance office of repute and shall on demand produce evidence of such insurance. If you fail to so insure we may do so on your behalf and you shall reimburse us the premium cost on demand. Until the full price has been paid, you shall hold on trust for us the policy and proceeds of insurance and shall on request execute a formal assignment in favour of us over the same or arrange for our interest to be noted on the face of the policy or for us to be named as an insured person and, if we retain any interest in the insurance, for the policy monies to be paid direct to us, failing which into a separate bank account on trust for us
  - ii. shall store the delivered goods separately or in some other way ensure that they are readily identifiable as our property:
  - iii. irrevocably authorise representatives of ours at any time and from time to time (whether or not payment is due) to repossess the goods and for such purpose to enter any premises occupied by you or where the goods are or are thought to be and to sever the goods from anything to which they are attached without being responsible for any damage caused:  
and
  - iv. shall keep the delivered goods free from any charge, lien or other encumbrance
- 8.2 If while under our ownership, the goods or any of them are processed or incorporated into other goods (the New Goods) then, provided the goods remain as an identifiable and removable part of the New Goods, the provisions of conditions 8.1.1 & 2 shall apply.
- 8.3 Acting on our own account not as your agent we may sell or agree to sell any of the goods or the New Goods in your possession on such terms as we may in our sole discretion consider appropriate.
- 8.4 We shall be entitled to a general lien over all goods and materials of yours, which are in our possession or control from time to time in respect of any sums due at any time whatsoever to us.
- 8.5 Nothing in this condition 8 shall affect any other right or remedy of ours.
- 8.6 The provisions of this condition 8 shall survive termination of the contract for any reason
- 8.7 Nothing in this condition 8 shall confer any right upon you to return the goods or to refuse or delay payment therefore.

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## 9 Limitation & Liability

- 9.1 Goods may be delivered in cartons, bundles, glass barrows, loose, or in other packaging. In any case where it is established to our satisfaction that the goods have been damaged or lost (whether wholly or in part) in transit we will at our cost, repair or replace same provided that:
- i. in the case of total loss we are notified in writing within 14 days of receipt of invoice
  - ii. in the case of partial loss, or damage, you have returned to our representative (or where the goods have been delivered by a carrier his representative) our dispatch note duly signed by your representative and indicating thereon a shortage of or damage to the goods, carton, bundles, returnable containers, loose goods or other such packages as shall make up the delivery and full particulars are notified directly to us in writing within 3 days of delivery:
  - iii. in the case of damage, the goods and their packaging are retained by you for inspection by our representative.

We shall not be liable for any loss or damage in transit, except as above. We shall not be liable where the risk has been passed to you per clause 8.1 above.

- 9.2 If we (acting reasonably) are satisfied that any goods supplied by us are defective as to material or workmanship not caused wholly or partly while at your risk by willful default, accident, improper storage or use or failure to follow instructions and providing that the goods have not been dismantled, altered or subjected to attempted repair, our liability shall be limited to making good the defect without charge or repairing or replacing the goods or (at our discretion) refunding all or part of the price provided that the goods are returned to our premises carriage paid within a reasonable time after you become aware of the defect. In any event no making good repairing replacing or refunding defective material or workmanship will occur after the elapse of 10 years from the date of dispatch in respect of goods supplied for PVC-U and aluminium frames or 5 years from the date of dispatch in respect of goods supplied for timber frames. Where we find any returned goods are not defective, we reserve the right to charge you a handling charge.
- 9.3 Our obligations and liabilities to you arising out of or in connection with the goods shall be limited to those expressly set out in these conditions together with those which are implied or imposed by law to the extent that they cannot be limited, restricted or excluded by law. You hereby acknowledge that this is reasonable and reflected in the price and shall accept the risk and/or insure accordingly.
- 9.4 Subject to the foregoing, no collateral contract and no representation, warranty, condition, stipulation, liability or obligation whatsoever (including without limitation, whether arising in contract tort including negligence or otherwise: or expressly implied at common law by statute, custom usage or course of dealing or otherwise or in relation to loss, injury or damage of any nature whatsoever whether direct or consequential) is given, made or undertaken by us or our employees or agents in relation to the goods (including, without limitation, whether in relation to their description, correspondence with sample, state condition, quality (satisfactory or otherwise) performance, safety, merchantability, fitness for any particular purpose or other characteristic on delivery or at any other time), all of which are hereby excluded and extinguished.
- 9.5 Where we supply glass, the goods supplied will conform to the relevant Visual Quality standard of the Glass and Glazing Federation.

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- 9.6 No warranty or representation given by us or on our behalf including any advice as to the installation quantities, use or performance of goods supplied by us shall be binding upon us unless specifically stated in writing by us and incorporated into the contract. This exclusion also applies to information appearing in our drawings.

## **10 Your Indemnity**

- 10.1 You shall indemnify and hold harmless, us, our employees and agents against all liabilities, losses, damages, costs, charges, expenses (including without limitation legal fees and expenses on a full indemnity basis) actions, proceedings, claims and demands incurred by or brought against any of them and arising directly or indirectly out of or in connection with any breach of any of your obligations under these conditions or any contact between us.

## **11 Consequential Loss**

- 11.1 Without prejudice to the generality of the foregoing provisions we shall not in any event be liable to you for any indirect or consequential loss, damage or expense.

## **12 Insolvency & Breach of Contract**

- 12.1 We shall have the option (without prejudice to any of our other rights against you) by notice in writing to you to rescind the contract or to suspend delivery in the event of any of the following:
- i. should any sum owing by you to us be overdue
  - ii. should you be in breach of any term of the contract between us
  - iii. should you enter into any composition or arrangement with or for the benefit of, your creditors or have a receiving order in bankruptcy made against you or (if a body corporate) should you make a proposal for a voluntary arrangement or go into liquidation either voluntary or compulsory or have a receiver or administrative receiver appointed over all or any part of your assets, or have an administrator appointed, or you become unable to pay your debts within the meaning of Section 123 of the Insolvency Act (as maybe amended re-enacted or replaced from time to time). Or the equivalent circumstances occur in any other jurisdiction, or
  - iv. should you come under the control directly or indirectly of any person who does not control you at the date of the contract
- 12.2 In the event of any of the above, we may (at our discretion and without prejudice to our other rights) by written notice to you:
- i. declare (whereupon it shall forthwith become) immediately due and payable any indebtedness of yours to us on any account whatsoever; and
  - ii. to the extent that it has not been already effected, set off any indebtedness of yours to us under this and any other contract
  - iii. cease any further supply of goods

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## **13 Health and Safety & Instructions**

1. We hereby give notice to you that we have available upon request information and product literature concerning the currently known conditions necessary to ensure that the goods supplied will be safe and without risks to health when properly used, and you acknowledge it is for you to ask for further information if you so wish and you are deemed to have been afforded by us reasonable opportunity for the testing and examination of goods or materials prior to delivery to you in respect of their safety and risk to health and to have been afforded by us adequate information about the goods and materials prior to delivery to you in respect of their safety and risk to health and to have been afforded by us adequate information about the goods and materials in respect of the use for which they are designed, and have been tested and of any condition necessary to ensure that when put to that use they will be safe and without risk to health, whether or not the said information has been requested by you.
2. You shall comply, and ensure that your employees and agents strictly comply with all instructions, warnings, data sheets and other material supplied by us or in connection with the goods and shall when supplying the goods ensure that they are accompanied by the same.

## **14 Intellectual Property**

- 14.1 You shall have no rights to any intellectual property owned or licensed by us other than (if applicable) to resell the goods under the trade or service mark applied by us and you shall not, without our prior written consent, allow any trade or service mark applied by us or any instruction or warning applied to the goods to be obliterated or obscured.

## **15 Assignment**

- 15.1 You may not assign, charge or otherwise dispose of any rights hereunder in whole or in part

## **16 Force Majeure**

- 16.1 In the event of war, invasion, act of foreign enemy hostilities (whether war has been declared or not), civil war, rebellion, revolution, insurrection of military or usurped power, we shall be relieved of liability incurred under the contract wherever and to the extent to which fulfilment of such obligation is prevented, frustrated or impeded as a consequence of any such event or by any statutes, rules, regulations, orders or requisitions issued by any Government Department, Local Authority, or other duly constituted authority, or from strikes, lockouts, industrial or trade dispute, breakdown of plant or any other causes (whether or not of a like nature) beyond our control.

## **17 Waiver**

- 17.1 Forbearance or indulgence shown or granted whether in respect of these conditions or otherwise, shall not affect or prejudice our rights against you or be taken as a waiver of any of these conditions.

## **18 Governing Law**

- 18.1 This contract shall be governed by and construed in accordance with the laws of England and Wales and both parties thereby agree to submit to the jurisdiction of the Courts.

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## **Headnotes**

- 19.1 The headnotes to these conditions have been inserted for convenience and shall not affect their construction.