

# ESG GROUP LIMITED GENERAL CONDITIONS OF SALE

## 1. DEFINITIONS

"Company Signatory" means a person authorised by Us.  
"Goods" means the goods or when the context permits any incidental services to be supplied by Us as set in the Quotation.  
"you" and "your" and "Buyer" means you, the purchaser, the person, firm or company to whom the Quotation is addressed.  
"Contract" means the contract between you and Us for the supply of Goods incorporating these Terms.  
"Terms" means the terms set out in this document and any special terms agreed in writing between a Company Signatory and you.  
"Quotation" means the quotation given overleaf or attached hereto  
"Defect" means the condition and/or any attributes of the Goods and/or any circumstances which, but for the effect of these Terms would have entitled you to damages.  
"We" and "Us", "Our" and "Seller" means ESG Group Limited, Registered in England and Wales, number 9927672.

## 2. CONTRACT

- a) Unless otherwise expressly agreed in writing by Us, these Terms apply to the Contract between you and Us for the supply of Goods. The Goods are supplied on these Terms to the exclusion of all other terms and conditions (including, but without limitation, any terms and conditions which you may purport to apply under any purchase order, confirmation of order, specification or other document) or which are implied by trade, custom or course of dealing.
- b) All representations, terms, conditions, warranties or guarantees whether express or implied arising by statute common law or otherwise are (to the extent permissible by law) hereby excluded provided nothing in these Terms shall operate to exclude or restrict Our liability for fraud or fraudulent misrepresentation, personal injury or death resulting from Our negligence, or the negligence of Our employees agents or subcontractors, or to exclude the provisions of Section 12 of the Sale of Goods Act 1979.
- c) These terms are open to negotiation before We accept your order (whether or not in writing), which negotiation may result in change to any price published or earlier referred to. Any variation to the contract must be dealt with in accordance with clause 2i).
- d) If the whole or any part of any one or more provisions of the Contract are invalid or unenforceable at law, all other provisions of the Contract shall remain in full force and effect and the parties shall negotiate in good faith to agree and implement one or more substitute provisions having similar effect so far as the law permits. Any modification or deletion of a provision or part-provision under this clause shall not affect the validity of the rest of the Contract.
- e) All illustrations, data and other information contained in Our brochures, catalogues, advertisements, price lists, technical data sheets or other documents or samples are approximate and are provided for the sole purpose of giving an approximate idea of the Goods. They shall not form part of the Contract or have any contractual force.
- f) Coloured laminate products are influenced by both the type of glass used and lighting. You should first obtain a sample from Us, using the same glass to be used in your project. We accept no responsibility for differences in colour where a sample has not been obtained prior to placing your order.
- g) Quotations are invitations to treat only and not an offer and are valid for [30] days from the date of quote.
- h) No order placed by you shall be deemed to be accepted by Us until a written acknowledgement of your order is issued by Us, at which point and on which date the Contract between us shall come into existence.
- i) No variation of the Contract shall be effective other than with the written agreement of one of Our company directors. ("Company Signatories"). Any contrary or additional terms, unless so agreed, are excluded.
- j) Any Contract or order to which these Terms 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.
- k) The Seller shall not be held responsible for the duplication of supply should more than one copy of an order be received from the Buyer and any such duplication will be payable in full.
- l) Orders may be cancelled only with the agreement of one of Our Company Signatories and you will indemnify Us against all costs, claims, losses or expenses incurred as a result of that cancellation.
- m) If you wish the Goods to comply with any specification, you must notify Us of these requirements in writing and any such specification must be agreed by Us in writing [in accordance with clause 2i)], to be incorporated in the Contract between us. By making an order, you confirm that you are responsible for ensuring that the Goods are appropriate for the intended application and their use complies with all local and national legislation, building regulations, standards, codes of practices and any other requirements.
- n) If you submit full sized templates then the Goods will be manufactured to the size of the template. If there is a discrepancy between written instructions from you and the template provided by you, We will manufacture to the size of the template.

- o) You must clearly mark any documents, templates or any other information supplied by you which you require Us to return to you.
- p) Products, templates or documents submitted to Us by you are submitted at your own risk.
- q) Templates must always be made of a rigid material.
- r) You shall be responsible to Us for ensuring the accuracy and completeness of the terms of any order including any applicable design, drawing, documentation, template or specification provided to Us by you and for giving Us any necessary information relating to the Goods within a sufficient time to enable Us to perform the Contract.
- s) Unless expressly agreed otherwise in writing the Seller may manufacture the Goods at any of its works or plants and/or the Seller may sub-contract the manufacture and/or supply of the Goods.
- t) The Seller reserves the right to amend any specification connected with the Goods if required by any applicable statutory or regulatory requirements.

## 3. PRICES AND PAYMENT

- a) Prices are subject to withdrawal and change without notice, and unless agreed otherwise in writing, Goods will be invoiced at the prices ruling at the date of despatch. Prices for our Goods are available on request.
  - a) There are minimum area charges, which vary according to the Goods ordered. Ovals, circles, or irregular shapes will be charged the full rectangular area from which they are cut and surcharges will apply to such Goods. Prices are determined by reference to rounded metric measurements to two decimal places.
  - b) These minimum area charges and/or surcharges and/or rounded metric measurements from which prices are determined have been communicated to the Buyer and the Buyer accepts the same.
  - c) Prices quoted are exclusive of VAT. Additional charges will be made in respect of all increases in the cost of labour, materials, plant and overheads occurring after the date of Quotation.
  - d) We reserve the right to levy the following charges:
    - (i) Energy surcharge unless specifically stated in the Quotation, which shall be charged at the prevailing rate on date of the invoice; and
    - (ii) Additional charges including, but not limited to, administration charges, stillage charges and delivery charges as notified to you from time to time.
  - e) Prices quoted in the Quotation are applicable to the quantity specified, multiplied by the total area chargeable (area of each item) and based on the information provided by you.
  - f) In the event of orders being placed for lesser quantities, or if there is any change in specifications, delivery dates, or delay is caused by your instructions or lack of instructions, We shall be entitled to adjust the price of the Goods contained in the Quotation to take account of the variations.
  - g) If you request amendments or variations to your order after acceptance of your order by Us in accordance with these Terms, We reserve the right to charge you for any costs incurred by Us as a result of Us considering/assessing your requested amendments or variations.
  - h) If We agree to amendments or make variations to your order you will be liable for any increase in costs due to the changes that have been made, including but not limited to, the cost of the Goods or the effect the change(s) has/have on the manufacturing process, due to clause 2i) and administration costs incurred by Us as a result of such amendments or variations.
    - i) For a Buyer with an account, payment is due on or before the day due as per the credit terms 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.
    - j) Buyers who do not hold an account will be required to pay the whole purchase price of the Goods before the Goods are manufactured and/or delivered.
    - k) If the Buyer fails to make any payments when due We may, at Our option and without prejudice to any other rights or remedies which We may have under the Contract or otherwise, suspend further deliveries and the processing of new orders, until payment is made or terminate the Contract.
    - l) You shall make all payments due under the Contract in full without deduction whether by way of set-off, counterclaim, discount, abatement or otherwise.
    - m) Credit facilities may be withdrawn or reduced at any time at Our sole discretion. In the event that credit facilities are withdrawn or reduced you may have to complete a re-application process to obtain credit.
    - n) Even if We have previously agreed to give you credit, We reserve the right to refuse to execute any order or Contract if the arrangements for payment or your credit rating is/are not satisfactory to Us.
    - o) At Our discretion We may require payment for each consignment when it is available and before it is despatched in which case delivery will not be effected until We are in receipt of cleared funds as requested by Us.
    - p) We may at any time suspend the performance of Our obligations under any contract until the Buyer is able to pay, or has given security for payment, for the Goods.

- q) We shall be entitled to charge interest on the outstanding balance of all overdue accounts from the time of default calculated on a daily basis at the annual rate of 8% above the base lending rate of the Bank of England from time to time until payment is made whether before or after any judgment.
- r) If a cheque received from the Buyer is returned or represented by the Sellers bank, a minimum charge of £5 plus VAT will be made on each separate occasion.
- s) The Buyer shall indemnify the Seller in full against all direct, indirect or consequential liabilities (all three of which terms include, without limitation, loss of profit, loss of business, depletion of goodwill and like loss) loss, damages, injury, costs and expenses (including legal and other professional fees and expenses) awarded against or incurred by the Seller as a result of or in connection with the Buyer's failure to make any payments when due.
- t) We reserve the right to charge an administration fee if additional copies of invoices are provided to you.

## 4. TITLE AND RISK

- a) Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Terms, the title in the Goods shall not pass to the Buyer until the Seller has received, in cleared funds or cash, payment in full of the price of the Goods.
- b) Until such time as the property in the Goods passes to the Buyer:-
  - (i) The Seller shall have absolute authority to retake, sell or otherwise deal with or dispose of all, or any part of the Goods in which title remains vested in the Seller;
  - (ii) For the purpose specified in 4b(i)) above the Seller or any of its agents or authorised representatives shall be entitled at any time and without notice to enter upon any premises in which the Goods or any part thereof is installed, stored or kept, or is reasonably believed so to be;
  - (iii) The Seller shall be entitled to seek a Court injunction to prevent the Buyer from selling, transferring or otherwise disposing of the Goods;
  - (iv) The Buyer shall store or otherwise denote the Goods in respect of which property remains with the Seller in such a way that the same can be recognised as the property of the Seller;
  - (v) The Goods must be retained by the Buyer in identical packaging and in secure conditions and the Buyer must not allow it to become intermingled with any other product or substance.

## 5. DELIVERY

- a) Delivery shall, unless otherwise agreed, be at the Buyer's normal place of business ("Delivery Location"). The Seller reserves the right to choose the form of transport for the Goods and the composition of the load.
- b) Times or dates for despatch or delivery of Goods or for completion of any glazing/fixing work to be carried out by Us are not of the essence and are estimates only.
- c) We shall not be liable for any delay in delivery (including any liability to any third party) resulting from any delay in delivery of the Goods provided that We do deliver the Goods within a reasonable time of the estimated time.
- d) We shall not be liable (including any liability to any third party) for any delay in delivery or failure to deliver the Goods that is caused by a Force Majeure event, or a delay in, or your failure to provide Us with, adequate delivery instructions, or any other instructions or documentation that are relevant to the supply of the Goods.
- e) We shall not be liable for failure to start or complete glazing/fixing work on time when such delay or failure is caused by a Force Majeure event, or a delay in, or your failure, to provide Us with adequate instructions, or other relevant documentation required for Us to start or continue work.
- f) Where delivery is to be made by instalments each delivery is deemed to be the subject of a separate Contract and any failure by Us in respect of any one delivery shall not entitle you to repudiate the Contract as a whole or reject any further instalments to be delivered thereunder.
- g) When the Goods (whether or not being 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 Delivery Location, delivery in relation to those Goods is complete and the risk in them shall pass to the Buyer.
- h) Upon delivery or collection the loading/unloading, handling, working or carrying of the Goods shall be entirely at your risk.
- i) Where We require you to provide facilities to unload deliveries promptly and such facilities shall be provided by you at no extra cost to Us. It is your responsibility to provide your required delivery address and unloading facilities at the Delivery Location unless We have agreed to provide these facilities at the time of order placement.
- j) We may refuse to deliver and/or unload Goods if in Our or Our driver's opinion it would be unsafe to do so.
- k) If for any reason you fail to accept delivery of any of the Goods when they are ready for delivery or We are unable to deliver the Goods on time because you are not available to take delivery or you change delivery instructions or the Delivery Location is inaccessible or unsafe under clause 5j) or

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you have not provided appropriate instructions, documents, licences or authorisations:

- (i) We will have no liability for any failure to deliver the Goods;
  - (ii) Risk in the Goods shall pass to you (including for loss or damage caused by Our negligence);
  - (iii) The Goods shall be deemed to have been delivered at the time attempted delivery was made under clause 5k);
  - (iv) Goods will be invoiced and payment will fall due as per the Buyer's agreed payment terms in which the Goods are ready and due for delivery.
  - (v) We may store the Goods until delivery, whereupon you shall be liable for all related costs and expenses (including without limitation, storage and insurance).
  - (vi) You will indemnify Us for any costs, loss or damages incurred by Us in this respect.
- l) If Goods are delivered on stillages the following shall apply:
- (i) You must make available to Us for collection any stillages from previous deliveries.
  - (ii) The stillages remain Our property and you cannot modify, adapt or use them as storage racks or for any other purpose.
  - (iii) Both wooden and metal stillages form part of the packaging for Our glass products only. They are not lifting equipment therefore you must not use them for lifting glass to any height.
  - (iv) Craneable stillages are only available by prior arrangement.
- m) Pallets, frames, stillages and all other distribution equipment are the property of the Seller and must be returned to the Seller within the agreed period, normally 10 days. Any re-use of such equipment by the Buyer is entirely at the Buyer's own risk. Failure to return within the timescale stipulated will incur a weekly rental charge at the rate notified from time to time. Any stillages not returned within one month of delivery will be charged at the replacement stillage rate notified to you from time to time.

## 6. INSPECTION

- a) The Buyer agrees to inspect the Goods upon delivery or collection for both quantity and quality. 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.
- b) You must advise Us by telephone immediately and give Us written notice within 48 hours of unloading of any claim for short delivery and if you do not give Us that notice within that time:
  - (i) The Goods will be deemed to have been delivered in the quantities shown in the delivery documents.
  - (ii) You shall not be entitled, and irrevocably and unconditionally waive any rights, to reject the Goods or claim any damages whatsoever, for short delivery howsoever caused.
- c) Our liability for short delivery is limited to making good the shortage.
- d) If the Buyer should receive any defective goods, it is their responsibility to inform the Seller of the defect within 48 hours, and request a collection note from the Seller once available for return.
- e) Where it is, or would have been, apparent on a reasonable inspection that the Goods are not in conformity with the Contract or (where the Contract is a contract for sale by sample) that the bulk does not compare with the sample, you must advise Us by telephone within 48 hours.

## 7. WARRANTIES AND LIABILITIES

- a) You agree to indemnify Us for all injury, loss or damage occurring to any person or property and against all actions, demands, expenses or charges made in connection with the Contract arising from the use or installation of the Goods where the use or installation of the Goods results in injury, damage or loss due directly or indirectly to the carelessness or negligence of you or your employees or agents or subcontractors or to any breach by you of your obligations to Us under the Contract.
- b) We shall not be liable:
  - (i) if the Defect arises from wear and tear.
  - (ii) if the Defect arises from wilful damage, negligence, abnormal working conditions, misuse, interference in any way, failure to follow Our instructions, British Standard or industry instructions relevant to the Goods, or storage of the Goods in unsuitable conditions (but this subclause 7b) shall not apply to any act or omission on Our part).
- c) Subject to clauses 6d) and 6e) above, if any of the Goods do not conform with the Contract or are defective, We shall at Our option repair or replace such Goods (or the defective part), or refund the price of such Goods at the pro rata Contract rate, or provide a credit note.
- d) The Seller warrants to the Buyer that the Goods shall conform to appropriate product standards as approved by The British Standards Institute (where applicable), or applicable regulatory body or otherwise to recognised industry standards defined and published by the Glass and Glazing Federation, 54 Ayres Street, London, SE1 1EU.
- e) Save as expressly provided by these Terms, or as expressly provided in any specific written warranty issued by the Seller, or as otherwise specifically agreed in writing by the Seller, the Buyer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of Us.

- f) Goods represented by the Buyer to be defective shall not, save as expressly provided for in these Terms, 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 and whether arising from contract, tort (including negligence), breach of statutory duty or otherwise (other than death or personal injury resulting from the Sellers negligence, liability for which is not excluded by these Terms).
  - g) Except in respect of personal injury or death caused by the Seller's negligence or the negligence or Our employees agents or subcontractors, 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.
  - h) 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.
  - i) When the Goods supplied are laminated, it is your responsibility to check the compatibility of the secondary seal with any proposed glazing system or glazing compound used during installation.
  - j) Unless otherwise stated in writing by Us no condition is made or to be implied nor is any warranty given or to be implied as to the life or wear of the Goods supplied.
  - k) The supply of Goods hereunder shall not confer any right upon you to use any of Our trademarks without Our prior written consent and at all times such trademarks shall remain Our property. Nor does it imply any right to use any patent, or other intellectual property right that the Seller may have, or any indemnity against infringement of the right of third parties.
  - l) If the Goods are manufactured, processed or produced by Us to the design, quantity measurement or specification supplied by you or your agents then you will unconditionally, fully and effectively indemnify Us against all loss damages, costs on an indemnity basis and expenses awarded against, or incurred, by Us in connection with any claim or settlement paid, or agreed to be paid, by Us in relation to any claim, including, but not limited to, infringement of any patents, copyright design, trademark, or any other industrial or intellectual property rights of any other person.
  - m) The Seller shall not be liable for any advice or representation in respect of the Goods unless confirmed in writing.
  - n) Subject to clause 2b) We shall not be liable under any circumstances to you whether in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, for any loss of profit, or any indirect or consequential loss arising in connection with the performance or contemplated performance of this Contract.
  - o) It may be possible that the glass contains inclusions of nickel sulphide (NIS), a naturally occurring phenomenon which is present in all glass types as a result of the float glass manufacturing process. Although rare, there is a possibility of spontaneous breakage of glass following the toughening process. The risk of spontaneous breakage can be reduced by subjecting the glass to a further, destructive process known as Heat Soaking. We take no responsibility for breakage as a result of nickel sulphide inclusions and shall not be responsible for any costs associated with the supply, installation or associated costs.
  - p) Our total liability to you in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence) breach of statutory duty, or otherwise, shall in no circumstances exceed £5,000,000
  - q) In any event, We shall not be liable to you unless legal proceedings in respect of the claim (if not previously satisfied) are begun within two years of date of the alleged breach of Contract.
- ## 8. TITLE
- a) Where We are unable to determine whether any Goods are the Goods in respect of which your right to possession has terminated you shall be deemed to have sold all the Goods of the kind sold by Us to you in the order in which they were invoiced to you.
    - (i) Until title passes under clause 8a) The Goods shall be stored separately from any other goods and identifiable as Ours and you shall not interfere with any identification marks, labels, batch numbers or serial numbers on the Goods.
    - (ii) Subject to clause 8(iv) We agree that You may use, or agree to sell the Goods as principal and not as agents in the ordinary course of your business;
    - (iii) If Goods are sold under clause 8(ii) title to the Goods shall pass from Us to you immediately before the time at which resale by you occurs
    - (iv) If, before property in the Goods passes to you, you become subject to any of the events listed in clause 9a), then, without limited any other rights or remedy We have:
      - i. Your right to resell the Goods or use them in the ordinary course of your business ceases immediately; and
      - ii. Require you to delivery all the Goods in your possession which have not been resold, or

irrevocably incorporated into another product to Us; and

- iii. If you fail to do so promptly We shall be entitled, at any time, to recover any or all of the Goods in your possession to which We have title; and
- iv. We, Our employees or agents may, with such transport as is necessary, enter upon any premises occupied by you, or to which you have access and where the Goods may be, or are believed to be, situated in order to recover such Goods

## 9. TERMINATION

- a) If the Buyer makes default in any payment, or commits any breach of the terms and conditions of any relevant Contract, or suffers distress on execution, or becomes insolvent, or commits an act of bankruptcy, or enters into any arrangement or composition with his creditors or goes/is put into liquidation (other than solely for amalgamation or reconstruction), or if an administrative receiver or administrator is appointed over the whole or any part of the Buyer's business, or if a petition for an administration order is presented to the Court, 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 of 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.

## 10. 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 reasonably endeavours to remove such cause(s) of non-performance, and shall continue performance thereunder without delay whenever such cause(s) are removed.
- b) The term "Force Majeure" for these purposes includes acts of God, fire, accident, lightning, earthquakes, storms, floods, explosion, war, strikes, lock-outs, other industrial action, and any other circumstances, whether similar or dissimilar, beyond the reasonable control of the Seller.

## 11. APPLICABLE LAW

- a) These conditions and any contract, dispute or claim (whether or not contractual) 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.