

SUPPLY 2 TRADE LIMITED - TERMS AND CONDITIONS

Your attention is drawn to the provisions of conditions 9.8, 9.9 and 11.5.

1. Interpretation

1.1 The definitions and rules of interpretation in this condition apply in these conditions.

You/your: the person, firm or company who purchases the Goods from the Company.

We/us/our: Supply 2 Trade Limited whose registered office is situated at (company reg no).

Contract: any contract between us and you for the sale and purchase of the Goods, incorporating these conditions.

Goods: any goods agreed in the Contract to be supplied to you by us as specified in the Job Sheet (including any part or parts of them).

Job Sheet: the specification for the Goods prepared by us based on your instructions.

Requirements: all planning, building regulation and all other third-party requirements whatsoever compliance with which is necessary or desirable in respect of the Goods following installation.

2. Application of terms

2.1 Subject to any variation under condition 2.3 the Contract shall be on these conditions to the exclusion of all other terms and conditions (including any terms or conditions which you purport to apply under any purchase order, confirmation of order, specification or other document).

2.2 No terms or conditions endorsed on, delivered with or contained in your purchase order, confirmation of order, specification or other document shall form part of the Contract simply as a result of such document being referred to in the Contract.

2.3 These conditions apply to all our sales and any variation to these conditions and any representations about the Goods shall have no effect unless expressly agreed in writing and signed by one of our directors. You acknowledge that you have not relied on any statement, promise or representation made or given by or on our behalf which is not set out in the Contract. Nothing in this condition shall exclude or limit our liability for fraudulent misrepresentation.

2.4 The signing of a Job Sheet by you shall be deemed to be an offer by you to buy the Goods specified subject to these conditions.

3. Orders for Goods

3.1 Upon receiving your instructions we will produce a Job Sheet detailing the Goods which we will manufacture. The Contract will come into existence upon you signing the Job Sheet.

3.2 You must check carefully (including by taking such professional advice as you may require at your expense) that:

3.2.1 The Job Sheet is complete and accurate in every respect.

3.2.2 The Goods you specify in your order will comply with all relevant Requirements. We will not be liable for any failure for the Goods to comply with any Requirement except where compliance with the Requirement is specified in the Job Sheet.

4. Delivery

4.1 You must check the Goods thoroughly on delivery and prior to installation. Once the Goods have been installed, we will not be responsible for any defect with the Goods which would have been apparent upon inspection prior to installation.

4.2 Unless otherwise agreed in writing by us, delivery of the Goods shall take place at our place of business. You shall take delivery of the Goods on any date specified by us for delivery or within 7 days of us giving you notice that the Goods are ready for delivery. Any dates specified by us for delivery of the Goods are intended to be an estimate and time for delivery shall not be made of the essence by notice. If no dates are so specified, delivery shall be within a reasonable time.

4.3 The quantity and description of the Goods shall be as set out in the Job Sheet.

4.4 All samples, drawings, descriptive matter, specifications and advertising issued by us, and any descriptions or illustrations contained in our catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract, and this is not a sale by sample.

4.5 If we adopt any major changes or modifications in construction, design or specification of the Goods to alter their external appearance then we shall inform you in writing and unless you shall deliver a notice of cancellation to us within 7 days from the date of the written notice of the variation then you shall accept the Goods as changed or modified in fulfilment of the Contract.

5. Delay

5.1 Subject to the other provisions of these conditions we shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods (even if caused by our negligence), nor shall any delay entitle you to terminate or rescind the Contract unless such delay exceeds 60 days.

5.2 We may deliver the Goods and/or carry out the Works by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the Contract. Each instalment shall be a separate Contract and no cancellation or termination of any one Contract relating to an instalment shall entitle you to repudiate or cancel any other Contract or instalment.

5.3 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 because of any failure by you:

5.3.1 Risk in the Goods shall pass to you (including for loss or damage caused by our negligence).

5.3.2 The Goods shall be deemed to have been delivered.

5.3.3 We may store the Goods until delivery, whereupon you shall be liable for all related costs and expenses (including, without limitation, storage and insurance) or we may leave the Goods at any address you have specified for delivery at your risk.

5.3.4 If 14 days after the day on which we notified you that the Goods were ready for delivery you have not taken delivery of them, we may resell or otherwise dispose of part or all the Goods and, after deducting reasonable storage and selling costs charge you for any shortfall below the price of the Goods.

6. non-delivery

6.1 The quantity of any consignment of Goods as recorded by us upon dispatch from our place of business shall be conclusive evidence of the quantity received by you on delivery unless you can provide conclusive evidence proving the contrary.

6.2 We shall not be liable for any non-delivery of Goods (even if caused by our negligence) unless you give written notice to us of the non-delivery within 2 days of the date when the Goods would in the ordinary course of events have been received.

6.3 Any liability of us for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods.

7. Risk/title

7.1 The Goods are at your risk from the time of delivery.

7.2 Title in the Goods shall only pass on payment in full of all monies owed to us by you.

8. Price

8.1 The price for the Goods shall be as set out in the Job Sheet and unless otherwise specified shall be exclusive of any value added tax, all costs or charges in relation to packaging, loading, unloading, carriage and insurance, all of which amounts you shall pay in addition when you are due to pay for the Goods.

9. Payment

9.1 Subject to condition

9.2 Time for payment shall be of the essence.

9.3 No payment shall be deemed to have been received until we have received cleared funds.

9.4 All payments payable to us under the Contract shall become due immediately on its termination despite any other provision.

9.5 You shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless you have a valid court order requiring us to pay to you an amount equal to such deduction.

9.6 If you fail to pay us any sum due pursuant to the Contract, you shall be liable to pay interest to us on such sum from the due date for payment at the annual rate of 15% above the base lending rate from time to time of Barclays Bank Plc, accruing daily until payment is made and compounded monthly, whether before or after any judgment.

9.7 To ensure swift payment, if an invoice is disputed for any reason, that dispute must be raised in writing within 15 working days of receipt of the invoice, otherwise the amount stated in the invoice must be paid in full without any deduction, set off (whether legal or equitable), abatement or counterclaim and the dispute can be resolved following payment.

9.8 You must pay to us our reasonable costs, plus expenses which we properly incur either taking steps, including court action, enforcing your obligations under this Contract following a failure by you to comply with such obligations or successfully defending a claim brought by you relating to this Contract.

9.9 If any payment is not made within the agreed credit terms outlined on your Supplynet account from the date of the invoice, you agree to pay to us the fees and expenses as applicable at the date of your order. These charges reflect expenses we incur instructing a debt collection company to collect outstanding debt on our behalf. A debt processing fee is payable once the invoice is passed to debt collectors for collection, and there is a charge per letter.

10. Quality

10.1 We warrant that (subject to the other provisions of these conditions) upon delivery and for a period of 12 months from the date of delivery/installation:

10.1.1 the Goods shall be of satisfactory quality within the meaning of the Sale of Goods Act 1979 (and for that purpose the Goods shall be deemed to be of satisfactory quality if they comply with the standards of the Glass and Glazing Federation and are free of blemishes other than blemishes which are not visible to the naked eye when viewed from 2.5 metres); and

10.1.2 The Goods shall be reasonably fit for any particular purpose for which the Goods are being bought if you had made known that purpose to us in writing and we have confirmed in writing that it is reasonable for you to rely on our skill and judgement.

10.2 We shall not be liable for a breach of any of the warranties in condition 10.1 unless:

10.2.1 You give written notice of the alleged breach to us within 5 days of the time when you discover or ought to have discovered the alleged defect: and

10.2.2 We are given a reasonable opportunity after receiving the notice of examining the alleged defect.

10.3 We shall not be liable for a breach of any of the warranties in condition 10.1 if:

10.3.1 You make any further use of such Goods after giving such notice as required by condition 10.2.1; or

10.3.2 The defect arises because you failed to follow our oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice; or

10.3.3 You alter or repair such Goods without our written consent.

10.4 Subject to condition 10.2 and condition 10.3, if any of the Goods do not conform with any of the warranties in condition 10.1 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 provided that, if we so request, you shall, at our expense, return the Goods or the part of such Goods which is defective to us.

10.5 If we comply with condition 10.4, we shall have no further liability for a breach of any of the warranties in condition 10.1 in respect of such Goods. **10.6** Any Goods replaced shall belong to us and any repaired or replacement Goods shall be guaranteed on these terms for the unexpired portion of the 12-month period.

11. Limitation of liability

11.1 Subject to condition 5, condition 6 and condition 10, the following provisions set out our entire financial liability (including our liability for the acts or omissions of our employees, agents and sub-contractors) to you in respect of:

11.1.1 Any breach of these conditions.

11.1.2 Any use made or resale by you of any of the Goods, or of any product incorporating any of the Goods; and
11.1.3 Any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.

11.2 If the Goods are manufactured or any process is applied to the Goods by us in accordance with specifications supplied by you then you shall pay any additional costs incurred by us in manufacturing the Goods and you will indemnify us against any loss damages costs and/or expenses awarded against or incurred by us in connection with any infringement of patent, copyright design, trademark or other industrial or intellectual property rights of any other person which results from our use of your specification.

11.3 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.

11.4 Nothing in these conditions excludes or limits our liability:

11.4.1 For death or personal injury caused by our negligence; or

11.4.2 Under section 2(3), Consumer Protection Act 1987; or

11.4.3 For any matter which it would be illegal for us to exclude or attempt to exclude its liability; or

11.4.4 For fraud or fraudulent misrepresentation.

11.5 Subject to condition 11.3 and condition 11.4: 11.5.1 Our total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to twice the amount of the Contract price; and 11.5.2 We shall not be liable to you for any pure economic loss, loss of profit, loss of business, depletion of goodwill or otherwise, in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

12. Assignment

12.1 We may assign the Contract or any part of it to any person, firm or company. You shall not be entitled to assign the Contract or any part of it without our prior written consent.

13. Force majeure

We reserve the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Goods ordered by you (without liability to you) if we are prevented from or delayed in the carrying on of our business due to circumstances beyond our reasonable control including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labor disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, provided that, if the event in question continues for a continuous period in excess of 14 days, you shall be entitled to give notice in writing to us to terminate the Contract.

14. General

14.1 Each of our rights or remedies under the Contract is without prejudice to any other of our rights or remedies whether under the Contract or not.

14.2 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, 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 the Contract and the remainder of such provision shall continue in full force and effect.

14.3 Our failure or delay in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.

14.4 Any waiver by us of any breach of, or any default under, any provision of the Contract by you shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.

14.5 The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

14.6 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.

15. Communications

15.1 All communications between the parties about the Contract shall be in writing and sent by recorded post, fax or electronic mail.