

## TERMS AND CONDITIONS OF SALES

(Effective from 3<sup>rd</sup> January 2018)

### 1. PARTIES AND AGREEMENT

Birmingham Glass Solutions Ltd, hereafter referred to as the SELLER, agrees to sell. The BUYER, hereafter referred to as the BUYER, agrees to buy subject to the terms and conditions set forth herein, which constitute a binding sales agreement between the SELLER and the BUYER (hereafter referred to as this Agreement).

### 2. AGREEMENT APPLICATION

2.1 Applicability: This Agreement governs all transactions between SELLER and BUYER, including but not limited to quotations, offers, purchase acceptances, and Purchase Orders related to the sale of Products (both goods and services).

2.2 Acceptance of Terms: BUYER is deemed to have accepted the terms of this Agreement upon the earliest of the following:

- a) Expressing intent to purchase Products;
- b) Submitting a Purchase Order;
- c) Accepting delivery of Products; or
- d) Making a deposit or partial payment as indicated in SELLER's quotation or invoice.

2.3 Purchase Order Details: Purchase Orders must specify the Product descriptions, prices, and ordered quantities. SELLER disclaims any terms and conditions in a Purchase Order, which is used solely for BUYER's administrative purposes.

2.4 Communication: Parties agree to communicate all Purchase Orders and purchase decisions electronically in a reasonable manner.

### 3. PAYMENT TERMS

3.1 A BUYER is designated as an "Authorised Credit BUYER" and granted a maximum payment period of 30 days from the invoice date only if explicitly specified in the SELLER's payment terms, price quotation, or subsequent invoice.

3.2 BUYERS not identified as Authorised Credit BUYERS must adhere to immediate payment terms as agreed upon.

### 4. PRODUCT PRICING, ADJUSTMENT, AND PAYMENT

4.1.1 Prices, as stated in the SELLER's quotations, are based on current costs and are valid for the period specified therein. Prices may be adjusted due to changes in quantities, quality, dimensions, additional requirements, or alterations in work sequence or timing, both before and after invoicing.

4.1.2 Should the BUYER's project not be ready for delivery or installation one year following the initial payment deposit date, an annual liquidated damage fee of 10% of the project value will be imposed. The liquidated damage fee will be invoiced separately and is payable in full by the BUYER prior to the commencement of work, applicable each subsequent year until project completion.

4.2 Price Quotations and Variations - BUYERS must verify and seek clarification for all items and quantities in price quotations before approval. Any additional requests or changes not in the initial quotation will be considered a 'Variation' and invoiced as an 'Extra Item'.

4.3 Currency and VAT - All prices are in Mauritian Rupees (Rs.) and include VAT, unless otherwise stated.

4.4 Payment Methods - Payments can be made via cash, cheque to BIRMINGHAM GLASS SOLUTIONS LTD, Internet Banking, or Juice to the SELLER's mobile number.

4.5 Payment Schedule - a down-payment is required upon confirmation of the work, an additional payment before installation/delivery, and the remaining balance upon completion/delivery, with specific percentages and amounts as detailed in the provided quotation/estimate

4.6 Late Payment and Legal Recourse - Late payments may incur an 8% interest above the Commercial Base Rate. If legal action is required for payment recovery, the BUYER is responsible for all costs and a 10% attorney commission.

4.7 No Deductions - The BUYER may not make deductions or set-offs for alleged non-conformities or defects without the SELLER's written approval.

## **5. DELIVERY AND SITE ACCESSIBILITY**

5.1 Any time specified for delivery is given as an indication only and shall not constitute a contractual obligation. Failure to comply with such delivery time by the SELLER shall not give rise to any right to claim any loss or damage, nor will the BUYER be entitled to cancel or suspend the order for failure to meet any estimated date on the part of the SELLER.

5.2 Where the Products include installation and/or delivery, the BUYER shall grant the SELLER or the agents/employees thereof free access to work areas for the purpose of delivery of Products and/or performance of surveys and/or templating/installation. It is the BUYER'S responsibility to provide a safe place on site for the storage of glass and other material. The SELLER will store all glass panels either by placing them in a leaning position against a wall or on an A-frame cart. Any shifting of glass required by the BUYER, after storing the panels, will be invoiced as an additional item.

5.3 Failure from the BUYER to receive prompt delivery at the specified delivery time, of which the SELLER has given the BUYER reasonable notice, shall entitle the SELLER to recover all costs and expenses incurred as a result thereof.

5.4 The BUYER shall have, at the time of order, the responsibility to inform the SELLER of any factors which may affect the proper delivery and/or surveying/templating/installation of the Products. If the site is not accessible, it shall entitle the SELLER to recover all costs and expenses incurred as a result thereof.

5.5 BUYER shall be fully and exclusively liable for any additional charges incurred by the SELLER to affect the delivery and/or installation as a result of the site not being properly accessible and/or any unreported factors which may affect delivery and/or installation.

5.5.1 If the BUYER's project is facing a delay of more than 15 (fifteen) days beyond the scheduled date, the SELLER will bill the BUYER a storage fee of Rs 50 per panel per day for a maximum period of 30 (thirty) days.

5.5.2 In the event that the BUYER's project is facing further delay after the above-mentioned period of 30 (thirty) days, the BUYER should arrange to collect the glass immediately and arrange for safe and ventilated storage. In the event that no action is taken on the part of the BUYER, the SELLER will move the product to any paid storage facilities available and the invoice shall be sent to the BUYER who will have to pay this amount in full before the Product is installed on the site. The BUYER will take responsibility for covering all storage costs and will be held responsible for all risks and damages that may arise.

5.6 If the BUYER does not present himself/herself at the specified delivery place and time within a reasonable timeframe (which should not be more than one hour), the SELLER may cancel the delivery and/or installation and shall be entitled to recover all costs and expenses incurred as a result thereof. The delivery and/or installation may be re-scheduled based on the SELLER's planning schedule.

5.7 Where the Products are to be collected by the BUYER, the latter shall have 2 (two) weeks to collect the Products. If the Products are not collected in the afore-mentioned time frame, the BUYER shall be held responsible for all risks and damages that may arise from such a delay and the SELLER may, at their absolute discretion, dispose of the products as the SELLER deems necessary.

5.8 The SELLER reserves the right to delay or suspend delivery and/or or installation if the BUYER fails to honour the agreed payment terms. In the event of a late payment, clause 5.5.1 will apply.

## **6. SPECIAL ORDER**

6.1 A Special Order is an order for non-stock item/s specially ordered from the relevant supplier/s upon the request and approval of the BUYER.

6.2 The production and delivery of such item/s is totally independent of the SELLER's control as these factors rely entirely upon the availability in the supplier's factory and/or container availability and/or a vessel being available to the shipping line company.

6.3 Vessel delay may happen due to bad weather, closure of ports, bunching of vessels, transshipment, operational delay, etc. The SELLER is therefore discharged of all responsibilities for any delay in the consignment's arrival and any resulting late delivery.

6.4 If BUYER has elected to purchase Special Order products, BUYER understands and agrees that any contracts for Special Order product may not be cancelled, withdrawn or otherwise modified by BUYER, and BUYER further understands and agrees that such Special Order products, may not be returned, refused or rejected for any reason whatsoever.

## **7. RISKS**

7.1 As from delivery of the Products, the BUYER shall bear all risks including that of total or partial loss of the Products. Quality defects due to mishandling of the Products after delivery and/or installation shall not be entertained by the SELLER.

7.2 Upon satisfactory delivery and/or installation of the Products, the BUYER is required to sign a Delivery Note, thereby confirming that the goods and services have been delivered correctly and without reserve. Any subsequent issues or claims regarding the Products or services that were not identified and documented at

the time of signing the Delivery Note will not be recognized as valid and will not be subject to remediation by the SELLER.

7.3 Notwithstanding delivery, the Products delivered shall remain the exclusive and unalienable property of the SELLER until full and unconditional payment of the price and accessory costs, as invoiced. Until the final payment is made, the SELLER maintains the right to recover the Products at the BUYER's cost regardless of whosoever may be holding them. From the time of delivery, the BUYER shall ensure that the products remain easily identifiable until the full and unconditional payment of the price and accessory costs are made, as invoiced.

7.4 In case the SELLER is found liable for any reason whatsoever, the SELLER's liability shall be strictly limited to the value of Products sold.

7.5 While all care and precautions are taken, glass remains a fragile material and may break during shipment, transportation, or handling. In the event of breakage, the SELLER will reprocess the glass and will supply the Product at a different time. In the event of breakage, the SELLER will not be liable for any late delivery. See also clause 5.1.

7.6 The BUYER acknowledges and accepts that the SELLER's Products consist of hazardous items. To prevent injuries, the BUYER will be responsible for restricting access to unauthorised persons to the site area outlined by the SELLER.

7.7 The BUYER must ensure that all children and animals are supervised during the installation process.

7.8 The BUYER accepts that the SELLER's employees will wear safety shoes as per Occupational Safety and Health Standards and that they cannot be asked to remove these safety shoes as this would be a serious violation to the law.

## **8. CANCELLATION AND RETURN POLICY**

8.1 Once delivered, no Products shall be taken back by the SELLER or exchanged.

8.2 Due to the nature of the SELLER's Products, no order shall be cancellable. If required, all ensuing costs, charges and expenses incurred until the date of modification will be debited from the BUYER, subject to the SELLER being entitled to recover the cost of any damages which may have occurred.

8.3 SELLER reserves the right to refuse or cancel any order placed for a Product, without liability, due to any of the below reasons:

Technical issues,  
Non-availability of the product(s),  
Payment issues identified by the SELLER'S Financial Department,  
Breakage of product during shipment, transportation, or handling.

8.4 Cancellation due to afore-mentioned reasons shall be regardless of whether the order has been confirmed and/or payment has been received. After calculation of all ensuing costs, charges and expenses, payment shall be refunded, and the BUYER shall be informed of the same. It shall take approximately 30 working days to refund the amount into the BUYER's account.

8.5 Non-Refundable Payments and Alternative Options (Excluding 8.3 Scenarios)

Except under circumstances outlined in clause 8.3, the following applies:

Deposits and payments are non-refundable.

If the BUYER opts not to proceed with the original project, the deposit may be utilized towards the purchase of alternative products from the SELLER.

Upon request, the BUYER may be issued a voucher equivalent to the value of the deposit, usable for future purchases. This voucher will be valid for one year from the date of issue.

## **9. WARRANTY LIMITATIONS**

9.1 The SELLER provides the BUYER with a Limited Warranty. All terms, conditions and warranties, other than those expressly set out in this Agreement or in any specific written warranty issued by the SELLER, are excluded.

9.2 The BUYER understands and agrees that no warranty under this agreement shall be available to those Products sold but not paid for in full. No claims shall be considered if the invoice is not produced.

9.3 This Limited Warranty applies only to the BUYER and may not be assigned or transferred by the BUYER to any other party.

9.4 This Limited Warranty shall be the sole and exclusive remedy available to the BUYER after successful delivery and/or installation.

9.5 This Limited Warranty shall not apply in case of:

- a) Any glass or mirror damage or breakage after successful delivery/installation;
- b) Discoloration or stains due to calcareous water caused to glass panels;
- c) Any unauthorized alteration or modification made to the Product;
- d) A lack of basic care and maintenance given to the Product;
- e) Cleaning with the wrong products;
- f) Third party installation damages;
- g) Placing toxic or hot items too close to the Products for extended periods of time;
- h) After inspection, it is determined that the Product has not been maintained in accordance with Product Care and Maintenance guidelines;
- i) Damage caused by faulty design, careless handling, alteration and misuse;
- j) Attempts to break in (for Polycarbonate Products);
- k) Products which have been adjusted, modified or repaired by persons other than the SELLER;
- l) Products which have been installed by persons other than the SELLER; or
- m) Mirrors, in cases where:
  - i. The product is subjected to standing in water or other liquids;
  - ii. The product is damaged or altered by handling, storage, fabrication or installation after being successfully delivered by the SELLER to the BUYER;
  - iii. The coating or back paint surface has been attacked by lubricants soaps, gasket sealants, silicones or cleaning chemical fluid, adhesives, paints, solvents or exposure to solvents and other chemicals;
  - iv. The product is installed outdoor, in swimming pool enclosures, bath enclosures, or within refrigeration devices; or
  - v. Appropriate care has not been taken for the Product.

## **10. WARRANTY REMEDIES AND OTHER REMEDIALS**

10.1 Before any remedial work is to be carried out for any Product sold by the SELLER, a representative from the BUYER and a representative from the SELLER should carry out a visual inspection using the Glass and Glazing Federation (GGF)'s Visual Quality Standard for Glass, where the product should be viewed at a distance of not less than 3 (three) meters from the product. Non-structural defects that are not visible during normal use are not eligible for remedial actions.

10.2 In the event that remedial work needs to be carried out, it should be carried out a time suitable and convenient to the SELLER's planning schedule.

10.3 In the event that the problem is not with the SELLER's Products, but with any other factor, the SELLER shall be entitled to recover all costs and expenses incurred as a result thereof.

10.4 The SELLER shall repair or opt to replace any defective Product covered by the Limited Warranty.

10.5 The Limited Warranty shall be on a ONE-OFF BASIS and shall not be renewed after any remedial work and/or replacement of any defective Product has been carried out.

## **11. PHOTOGRAPHY**

11.1 The BUYER agrees to grant permission to the SELLER to photograph products which are being or have been installed or delivered on the SELLER's premises. These photographs may be used for advertising, publicity, or any other purpose and in any medium required. The BUYER further waives any claim for compensation and hereby completely and permanently discharges and releases the SELLER from any claim for damages of any kind arising from the use or publication of these photographs.

11.2 The BUYER agrees that no photographs or video of Products installed by the SELLER may be used for the BUYER'S advertising, publicity, or any other purpose and in any medium without written permission from the SELLER's management.

## **12. FORCE MAJEUR**

12.1 If the performance of this agreement is prevented by force majeure, the SELLER shall be excused, provided that the SELLER shall use reasonable endeavours to overcome or remedy its inability to perform as promptly as possible.

12.2 Force majeure shall mean any event beyond the SELLER's reasonable control and includes, without any limitation: strikes, riots, fires, floods, accidents, embargos, delays of carriers, shortages of raw materials, new laws or regulations.

## **13. GOVERNING LAW**

13.1 This Agreement shall in all respects be governed by and construed under the laws of Mauritius.

13.2 The BUYER consents and agrees that any dispute, disagreement, or claim arising between the parties shall, at the sole discretion of the SELLER, be finally resolved either:

In the Courts of Mauritius having jurisdiction over the SELLER; or

In accordance with the Rules of Arbitration of Mauritius by an Arbitrator or Arbitrators appointed by the Court.

13.3 No alteration, amendment, modification, variation or addition to these Terms and Conditions shall be binding upon the SELLER unless same is in writing and signed by all parties.

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