



## Tuff X Processed Glass Ltd Terms and Conditions of Sale

### 1. INTERPRETATION

In these conditions the following words have the following:

The Buyer, the person(s), firm or company who purchases the goods from the company;

The company: (name of supplier);

Contract; any contract between the Company and the Buyer for the sale and purchases of the goods, incorporating these conditions;

Delivery point; the place where delivery of the goods is to take place under condition 4;

Goods; any goods agreed in the contract to be supplied to the buyer by the company (including any part of them)

- 1.1 In these conditions references to any statute or statutory provision shall, unless the context otherwise requires, be construed as a reference to the statute or statutory provision as from time to time to amend, consolidate, modified, extended, re-enacted or replaced.
- 1.2 In these conditions references to the masculine include the feminine and the neuter and to the singular include the plural and vice versa as the context admits or requires.
- 1.3 In these conditions headings will not affect the construction of these conditions.

### 2. APPLICATION OF TERMS

- 2.1 Subject to any variations under condition 2.3 the contract will be on these conditions to the exclusion of all other terms and conditions (including any terms and conditions which the Buyer purports to apply under any purchase order, confirmation of order, specification or other document).
- 2.2 No term or conditions endorsed upon, delivered with or contained in the Buyers purchase order, confirmation of order, specification or other document will form part of the contract simply as a result of such documents being referred to in the Contract.
- 2.3 These conditions apply to all the Company's 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 a director of the Company. Nothing in this condition will exclude or limit the company's liability for fraudulent misrepresentation.
- 2.4 Each order for Goods by the Buyer from the company shall be deemed to be an offer by the Buyer to purchase Goods subject to these conditions.
- 2.5 No order placed by the buyer shall be deemed to be accepted by the Company until the Company issues a written acknowledgement of order or (if earlier) the Company delivers the Goods to the Buyer.
- 2.6 The buyer must ensure that the terms of its order and any applicable specifications are complete and accurate.
- 2.7 Any quotation is given on the basis that no contract will come into existence until the Company dispatches an acknowledgement of order to the Buyer. Any quotation is valid for a period of 30 days only from its date, provided that the Company has not previously withdrawn it.
- 2.8 Cancellation of an order will be accepted in writing where such cancellation can take place without financial loss to the Company. Once the execution of an order has been commenced by the Company the Buyer shall be responsible for payment of the value of all work done by the Company up to the date of receipt of the written notice of cancellation save that where a substantial part of the order has been executed cancellation can only take place with the written consent of the Company.

### 3. DESCRIPTION

- 3.1 The description of the Goods shall be set out in the company's quotation.
- 3.2 Where the Goods are to be fabricated to or in accordance with the Buyers written or drawn requirements including measurements or templates supplied by the buyer the Company shall use reasonable skill and care in the interpretation of the Buyers requirements and shall not be liable for any error or cost arising from such interpretations.
- 3.3 All drawings, descriptive matter, specifications and advertising issued by the Company and any descriptions or illustrations contained in the Company's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They will not form part of the contract.
- 3.4 Without prejudice to the generality of condition 3.3, where glass is described by reference to a particular colour or tint, the description shall not be deemed to refer to a colour or tint produced by any particular manufacturer and the Company shall be entitled to supply glass sourced from any manufacturer or manufacturers. The buyer acknowledges that continuity of colour and tint cannot be guaranteed (including between batches of glass sourced from the same manufacturer) and there may be minor variances in colour and/or tint between panes of glass.

### 4. DELIVERY

- 4.1 Unless other wise agreed in writing by the Company, delivery of the Goods shall take place at the Company's place of business.
- 4.2 The Buyer will take delivery of the Goods within 7 days of the Company giving it notice that the Goods are ready for delivery.
- 4.3 Any dates specified for the Company 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 specified, delivery will be within a reasonable time.
- 4.4 Subject to the other provisions of these conditions the Company will not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, loss of profits, loss of business, depletion of goodwill and like loss), costs, damage, charges or expenses caused directly or indirectly by any delay in the delivery of Goods (even if caused by the Company's negligence), nor will any delay entitle the Buyer to terminate or rescind the Contract unless such delay exceeds 180 days.
- 4.5 If for any reason the Buyer 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 Buyer has not provided appropriate instructions, documents, licences or authorisations,
  - (a) risk in the Goods will pass to the Buyer (including for loss or damage caused by the Company's Negligence);
  - (b) the Goods will be deemed to have been delivered; and
  - (c) the Company may store the Goods until delivery whereupon the Buyer will be liable for all related costs and expenses(including, without limitation, storage and insurance)

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- 4.6 The Buyer will provide at its expense at the Delivery Point adequate and appropriate equipment and manual labour for unloading the Goods except when delivery takes place at the Company's place of business.
- 4.7 Where the Buyer requires the and the Company agrees to make delivery of the Goods other than to the Buyers premises this fact must be clearly stated at the time of order and subject to the Company's acceptance of the order the Company may also apply a carriage charge.
- 4.8 The Buyer shall be responsible for the loading and unloading of their own materials and also for any damage to the Goods during loading and unloading, howsoever caused.
- 4.9 Pallets, frames, stillages and all other distribution equipment are the property of the Company and must be returned to the Company on demand. Should the Buyer fail to return any distribution equipment within 7 days following such demand, a charge at the rate of £60 plus Vat per item retained thereafter will be incurred. Use of distribution equipment for any purpose other than carriage and storage of glass supplied by the Company is prohibited. If the Company has charged the Buyer for the provision of such items the said charge will be fully credited to the Buyer if and when the items are returned to the Company as aforesaid.
- 4.10 If when the Goods are ready for dispatch the Buyer is unable to accept delivery or collection, the Company may at its entire discretion store the goods until such time as the Buyer is able to collect or accept delivery of the goods, in such circumstances the Company reserves the right to apply a surcharge calculated on a daily basis. The grant of such storage facilities shall not prejudice any claim for payments by the Company.
- 4.11 Where delivery or collection of an order is made by instalments each delivery or collection shall be deemed to be the subject of a separate contract and any failure by the Company in respect of any one delivery shall not entitle the Buyer to repudiate the order or any instalments remaining to be delivered there under.
- 4.12 Where the Buyer collects the Goods from the Company's premises it shall be the responsibility of the Buyer to inspect the goods before removing the same from the Company's premises.
- 4.13 Where the goods are delivered by the Company to the address nominated by the Buyer it is the responsibility of the Buyer to inspect the goods upon delivery. The Buyer must inform the Company of any defects within two working days following the time of delivery. If the Company accepts that the goods are defective it will at its discretion replace any defective item charge or credit the Buyer with the value of the same, providing that the Buyer has returned the defective goods to the Company or at the Company's discretion made the defective product available for collection within 14 days of delivery. The Buyer shall not be entitled to reject or the Company shall not be obliged to replace or give credit for any goods on account of imperfections or variations inherent in the manufacturing process of glass.

## 5. NON-DELIVERY

- 5.1 The quantity of any consignment of Goods as recorded by the Company upon despatch from the Company's place of business shall be conclusive evidence of the quantity received by the Buyer on delivery unless the Buyer can provide conclusive evidence proving the contrary.
- 5.2 The Company shall not be liable for any non-delivery of Goods (even if caused by the Company's negligence) unless written notice is given to the Company within 3 working days of the date the Goods would in the ordinary course of events have been received.
- 5.3 Any liability of the Company for non-delivery of the Goods shall be limited to replacing Goods within a reasonable time or issuing a credit note at the pro-rata contract rate against the invoice raised.

## 6. RISK/TITLE

- 6.1 The Goods are at the risk of the Buyer from the time of delivery.
- 6.2 Ownership of the Goods shall not pass to the Buyer until the Company has received in full (cash or cleared funds) all sums due to it in respect of:
  - (a) the Goods; and
  - (b) all other sums which are or which become due to the Company from the Buyer on any account
- 6.3 Until ownership of the Goods has passed to the Buyer, the Buyer must:
  - (a) hold the Goods on a fiduciary basis as the Company's bailee:
  - (b) store the Goods (at no cost to the Company) separately from all other goods the Buyer or any third party in such a way that they remain readily identifiable as the Company's property;
  - (c) not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods;
  - (d) 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 Buyer shall produce the policy insurance to the Company, and
  - (e) hold the proceeds of the insurance referred to in condition 6.3(d) or hold payments made to the Buyer by its own customers for the Goods in accordance with condition 6.4 on trust for the Company and not mix them with any other money, nor pay the proceeds into an overdrawn bank account.
- 6.4 The Buyer may resell the Goods before ownership has passed to it solely on the following conditions:
  - (a) any sale shall be effected in the ordinary course of the Buyers business and market value; and
  - (b) any such sale shall be a sale of the Company's property on the Buyers behalf and the Buyer shall deal as principal when making such a sale.
- 6.5 The Buyers right to possession of the Goods shall terminate immediately if;
  - (a) the Buyer has a bankruptcy order made against him or makes an arrangement composition with his creditors, or otherwise takes the benefit of any statute provision for the time being in force for the relief of insolvent debtors, or (become a body corporate) convenes a meeting of creditors (whether formal or informal) or enters into liquidation (whether voluntary or compulsive) except a sole voluntary liquidation for the purpose only of reconstruction or amalgamation has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof. Or documents are filed with the court for the appointment of an administrator of the Buyer or notice of intention to appoint an administrator is given by the Buyer or its directors or the qualifying floating charge holder (as defined in paragraph 14 of schedule B the Insolvency Act 1986), or a resolution is passed or a petition presented to court for the winding up of the Buyer or for the granting of an administration order in respect of the Buyer, or any proceedings are commenced relating to insolvency or possible insolvency of the Buyer ,or
  - (b) the Buyer suffers or allows any executions, whether legal or equitable , to be levied on his/its property or obtained against him/it, or fails to observe/performs any of his/its obligations under the Contract or any other contract between the Company and the Buyer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Buyer ceases to trade; or
  - (c) the Buyer encumbers or in any way charges any of the Goods.
- 6.6 The Company shall be entitled to recover payment for the Goods notwithstanding that owners of any of the Goods has not passed from the Company.
- 6.7 The Buyer grants the Company, its agents and employees an irrevocable licence at any time enter any premises where the Goods are or may be stored in order to inspect them, or, where Buyers right to possession has terminated, to recover them.

## 7. PRICE

- 7.1 Unless otherwise agreed by the Company in writing the price for the Goods shall be the price issued out in the Company's price list or quotation on the date of quotation.

- 7.2 The price for the Goods shall be exclusive of any added tax and all costs or charges in relation to loading, unloading, carriage and insurance all of which amounts the Buyer will pay an addition when it is due to pay for the Goods.
- 7.3 Where more than one pane of any size is to be invoiced, the area of the pane will be calculated and rounded up to two decimal places of a square metre, and this will be multiplied by the number of panes of that size or approximate size.

## 8. PAYMENT

- 8.1 Unless agreed otherwise in writing, payment of the price for the Goods is due on the thirtieth day following the end of the month the Goods are delivered or deemed to be delivered (or the next working day after) ("the due date")
- 8.2 Time for payment shall be of the essence.
- 8.3 No payment shall be deemed to have been received until the Company has received cleared funds. Payment by post is at the Buyers risk.
- 8.4 All payments payable to the Company under the contract shall become due immediately upon termination of his contract despite any other provision
- 8.5 The Buyer shall make all payments due under the contract without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Buyer.
- 8.6 If the Buyer fails to pay the Company any sum due pursuant to the contract on the due date the Company may suspend further deliveries until payment is made or terminate the contract, the Buyer will be liable to pay interest to the Company on such sum from the due date at the monthly rate of 3%, accruing on a daily basis until payment is made, whether before or after any judgement. The Company reserves the right to claim interest and compensation for Late Payment of Commercial Debts (Interest) Act 1998
- 8.7 Non-account holding Buyers will be required to pay the whole purchase price of the goods before the goods are manufactured or delivered.

## 9. QUALITY

- 9.1 Where the Company is not the manufacturer of the Goods, the Company will endeavour to transfer to the Buyer the benefit of any warranty or guarantee given to the Company.
- 9.2 The Company standard warranty in the format current at the date of the relevant Contract shall apply to Insulated glass units. The warranty is limited to the replacement of any insulated glass unit which the Company at its entire discretion shall regard as defective within a period from the point of sale as set out in the written warranty (a copy of which is available on request) and shall in no event include the cost of replacement, fitting, handling or storage of the relevant unit or units or any consequential loss arising from the act of replacement or otherwise.
- 9.3 The Company shall not be liable for a warranty unless;
- (a) the Buyer gives written notice of the defect to the Company, and (if the defect is as a result of damages in transit) to the carrier, within two working days of the time when the Buyer discovers or ought to have discovered the defect; and
  - (b) the Company is given a reasonable opportunity after receiving the notice of examining such Goods and the Buyer (if asked to do so by the Company) returns such Goods to the Company's place of business at the company's cost for the examination to take place there.
- 9.4 The Company shall not be liable for a warranty if;
- (a) the Buyer makes any further use of such Goods after giving such notice; or
  - (b) the defect arises because the Buyer failed to follow the Company's 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
  - (c) the Buyer alters or repairs such Goods without the written consent of the Company.
- 9.5 Any Goods replaced will belong to the Company and any repaired or replacement goods will be guaranteed on these terms for the unexpired portion of the warranty period referred to in condition 9.2 above.
- 9.6 Where goods are screen printed, whilst every effort will be made to ensure colour consistency, continuity of paint colour cannot be guaranteed from order to order.

## 10. LIMITATION OF LIABILITY

- 10.1 Subject to condition 9, the following provisions set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of;
- (a) any breach of these conditions; and
  - (b) any representation, statement or tortious act or omission including negligence arising under or in connection with the contract.
- 10.2 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sales of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the contract.
- 10.3 Nothing in these conditions excludes or limits the liability of the Company for death or personal injury caused by the Company's negligence or fraudulent misrepresentation. Subject to conditions 10.2 and 10.3:
- (a) the Company's 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 this contract shall be limited to the agreed contract price for the Goods; and
  - (b) the Company shall not be liable to the Buyer for any indirect or consequential loss or damage (whether for loss of profit, loss of business, depletion of goodwill or otherwise), costs, expenses or other claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the contract.

## 11. ASSIGNMENT

- 11.1 The Buyer shall not be entitled to assign the contract or any part of it without the prior written consent of the Company
- 11.2 The Company may assign the contract or any part of it to any person, firm or company.

## 12. FORCE MAJEURE

- 12.1 The Company reserves the right to defer the date of delivery or to cancel the contract or reduce the volume of the goods ordered by the Buyer (without liability to the Buyer) if it is prevented

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from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Company 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 labour 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 180 days, the Buyer shall be entitled to give notice in writing to the Company to terminate the contract.

**13. GENERAL**

- 13.1 Each right or remedy of the Company under the contract is without prejudices to any other right or remedy of the Company whether under the contract or not.
- 13.2 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.
- 13.3 Failure or delay by the Company in enforcing or partially enforcing any provision of the contract will not be construed as a waiver of any of its rights under the contract.
- 13.4 Any waiver by the Company of any breach of, or any default under, any provision of the contract by the Buyer will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of the contract.
- 13.5 The parties to this contract do not intend that any term of this contract will be enforceable by virtue of the contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.
- 13.6 English law shall govern the formation, existence, construction, performance, validity and all aspects of the contracts and the parties submit to the exclusive jurisdiction of the English courts.

**14. COMMUNICATIONS**

- 14.1 all communications between the parties about this contract must be in writing and delivered by hand or sent by pre-paid first class post or sent by facsimile transmission;
  - (a) (in case of communication to the Company) to its registered office or such changed address as shall be notified to the Buyer by the Company; or
  - (b) (in the case of the communications to the Buyer) to the registered office of the addressee (if it is a Company) or (in any other case) to any address of the Buyer set out in any document which forms part of this contract or such other address as shall be notified to the Company by the Buyer.
- 14.2 Communications shall be deemed to have been received
  - (a) if sent by pre-paid first class post, 2 days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting);
  - (b) If delivered by hand, on the day of delivery;
  - (c) Communications addressed to the Company shall be marked for the attention of the Company secretary.

Signed: .....

Name: .....

Company: .....

Date: .....

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Company Registration 5997979