

## **Handrail & Balustrading Terms & Conditions of Sale**

Komfort Partitioning Limited

Registered Office:

Unit 501

Access 10 Business Park

Bentley Road South

Wednesbury

England

WS10 8LQ

Registered in England 9919265

Please retain these Terms for your records.

**The Purchaser's attention is drawn to the provisions of Clause 12.2 and particularly to Clause 12.3 below**

### **1 DEFINITIONS**

1.1 In these “**Terms**” “**We**” and “**Us**” means the company specified in our quotation or Order acknowledgement. “**You**” means the person, firm or company through their employees or agents seeking to purchase Goods from Us and “**Your**” shall be interpreted accordingly. “**Goods**” means the Goods and/or services to be supplied by Us. “**Company Signatory**” means a manager employed by Us. “**Order**” means Your written instructions which shall incorporate these Terms for the purchase of Our Goods. “**Contract**” means the Order and Our acceptance of the Order for sale of Goods by You governed by these Terms. “**Terms**” means these terms and any special terms agreed in writing between a Company Signatory and You. “**Glass Goods**” means goods to be supplied by Us made predominately from glass. “**Decorative Film**” means a film to be applied to the Glass Goods that provides a decorative pattern to the surface of the Glass Goods. “**Disclaimer**” means the disclaimer that We requested You sign if You required a Decorative Film to be placed on the Glass Goods or for any other request insisted upon by You against best practice recommendations made by Us. “**Working Day**” means a day other than a Saturday, Sunday or public holiday in England. “**Intellectual Property Rights**” means any and all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, semi-conductor topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world. “**Losses**” means losses (including any direct, indirect or consequential losses, loss of profit and loss of reputation), claims, damages, liabilities, fines, interest, penalties, costs, charges, expenses, demands and legal and other professional costs (calculated on a full indemnity basis). “**Insolvent**” means You ceasing to pay Your debts in the ordinary course of business or being unable to pay Your debts as they become due or You ceasing or threatening to cease to carry on Your business. “**Indebtedness**” means any obligation to pay or repay money (whether present or future, actual or contingent, joint or sole). “**Associated Company**” means Your subsidiary or holding company as defined in Section 1159 Companies Act 2006. “**Works**” means the delivery to the delivery address and/or installation of the Goods. “**Brexit**” means the United Kingdom’s withdrawal from the European Community (“**EU**”). A “**Pandemic/Epidemic Event**” means: (i) any pandemic (including, but not limited to, the COVID-19 coronavirus outbreak and/or any mutation thereof and any other outbreak of an infectious human disease) as announced by the government, the World Health Organisation (WHO) or their successors, or any epidemic that is not declared a pandemic, (ii) any measures, recommendations, regulations and legislation issued by the government and/or public authorities in relation to any pandemic/epidemic from time to time and/or (iii) any consequences of any pandemic/epidemic which are outside the reasonable control of Us, which affects the

Works including without limitation Us being unable to reasonably access the delivery and/or installation address, delay in or non-delivery of any materials required for the Works, Us being unable to reasonably adequately resource the Works.

- 1.2 In these Terms (except where the context otherwise requires):
  - 1.2.1 words in the singular include the plural and vice versa and reference to any gender includes the others;
  - 1.2.2 reference to “a person” includes a natural person, company or unincorporated body (whether or not having separate legal personality);
  - 1.2.3 a reference to “company” includes any company, corporation or other body corporate, wherever and however incorporated or established;
  - 1.2.4 references to legislation are to that legislation as amended, extended or re-enacted from time to time;
  - 1.2.5 a reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision;
  - 1.2.6 any words following the terms “including”, “include”, “in particular” or any similar terms shall be construed as illustrative only and shall not limit the sense of the words preceding those terms; and
  - 1.2.7 a reference to “writing” or “written” includes faxes and email.
- 1.3 Headings are for convenience only and shall not affect the interpretation of these Conditions.
- 1.4 The Contract shall be binding upon, and enure to the benefit of, the parties and their respective personal representatives, successors and permitted assignees, and references to any party shall include that party’s personal representatives, successors and permitted assignees.

**SAFETY INFORMATION ABOUT THE USE OF THE GOODS IS PROVIDED AND IT IS YOUR RESPONSIBILITY TO BRING THIS TO THE ATTENTION OF THE USER OF THE GOODS.**

## **2 THE CONTRACT**

- 2.1 All Orders are accepted by Us only under these Terms which may not be altered except with the written agreement of a Company Signatory.
- 2.2 Quotations and tenders do not constitute offers and We may withdraw or amend them at any time before they are accepted. If We withdraw a quotation or tender, We will do so in writing. All quotations and tenders are automatically withdrawn on the 30th day after their date without requirement of notification in writing.
- 2.3 We shall not be liable for any misrepresentation including any statement in any quotation or tender made by Us Our employees or agents to You as to the condition of the Goods their fitness for any purpose or as to specification, quantity or measurements unless the representation is made or confirmed in writing by a Company Signatory and/or is fraudulent. Any samples, drawings, descriptive matter or advertising issued by Us and any descriptions of the Goods illustrations or descriptions of services contained in Our brochures and other literature are for Your guidance only and (in the absence of fraud on Our part) shall not constitute representations by Us. They shall not form part of the Contract or have any contractual force.

- 2.4 Quotations and tenders have been prepared based upon information supplied by You and You are responsible for the accuracy and sufficiency of that information. You must check and confirm all measurements, sizes and quantities. We shall not be liable under Clause 2.4 or otherwise if material information is withheld concealed or misrepresented by You, Our decision as to what is material information is final.
- 2.5 Our quotations and tenders are all in accordance with our interpretation of BS 8300, BS 6180, BS 5395, BS EN 12150 (European Standard), Building Regs Doc B, Building Regs Doc M and Building Regs Doc K..
- 2.6 We may make changes to the specification of the Goods necessary to conform to any applicable statutory or EC requirements or where the Goods are supplied to Our specifications and the changes do not materially affect their quality or performance without having to provide you with prior notice.
- 2.7 We may charge You an extra sum for any site visits and abortive or excessive numbers of tenders prepared.
- 2.8 Orders may be cancelled only with the written agreement of a Company Signatory and You will indemnify Us against all losses damages costs and expenses We incur as a result of that cancellation. Notwithstanding, We reserve the right to charge a minimum of 10% of the Order value to cover administration costs incurred. Unused Goods will be accepted for return at Our discretion and on terms agreed with Us.
- 2.9 Each Order shall be deemed to be an offer by You to purchase Goods subject to these Terms and an Order shall be deemed to be accepted by Us on the earlier of Us giving written notice of acceptance or any act by Us consistent with fulfilling the Order.
- 2.10 The Contract constitutes the entire agreement between the parties. You acknowledge that you have not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of Us which is not set out in the Contract.
- 2.11 It is Your responsibility to check the accuracy of Our written acceptance of the Order is correct. Any discrepancy between Your Order and Our acceptance must be notified to Us in writing within five (5) Working Days of the date of such acceptance. In the absence of such notification We shall be entitled to supply Goods in accordance with the acceptance, and you shall be obliged to pay the agreed Price (as defined below) thereof.
- 2.12 These Terms apply to the Contract to the exclusion of any other terms that You seek to impose or incorporate or which are implied by trade, custom, practice or course of dealing.
- 2.13 We shall not be bound by any contract or any modification thereto until approved in writing by an officer of Us. The Contract when so approved, shall supersede all previous communications, either oral or written

### **3 SPECIFICATION CHANGES**

- 3.1 We reserve the right to make any alteration in the specification or design of any Goods without notice and to deliver Goods conforming to the altered specification or design in fulfilment of any Order for Goods provided that the Goods delivered are suitable for general use or for such specific purpose of which You have given written notice to Us.

### **4 QUALITY**

- 4.1 Unless a longer warranty period is agreed in writing between Us and You, We warrant that (subject to the other provisions of these Terms) upon delivery, and for a period of 6 months from the date of delivery, the Goods will:

- 4.1.1 be free from material defects in materials and workmanship;
- 4.1.2 be of satisfactory quality within the meaning of the Sale of Goods Act 1979;
- 4.1.3 be reasonably fit for any particular purpose for which the Goods are being purchased if You have 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 judgment; and
- 4.1.4 conform in all material respects with their description in any applicable specification;
- 4.2 We shall not be liable for a breach of warranty under in Clause 4.1 unless You give written notice of the breach to Us within the said period, and (if the defect is as a result of damage in transit), to the carrier:
  - 4.2.1 in the case of a defect that is apparent on normal visual inspection in accordance with Clause 9.1, within seven (7) Working Days of delivery; and
  - 4.2.2 in the case of a latent defect, within a reasonable time after the latent defect becomes apparent; and
  - 4.2.3 We are given a reasonable opportunity after receiving the notice under Clause 4.2.1 or 4.2.2 to examine such Goods and You (if asked to do so by Us) returns such Goods to the Our place of business at Your expense for the examination to take place there.
- 4.3 We shall not be liable for a breach of warranty under Clause 4.1:
  - 4.3.1 if You make any further use of such Goods after giving notice under Clause 4.2;
  - 4.3.2 if the defect arises because You or anyone appointed by you or on Your behalf or otherwise as a result of defective installation failed to follow any instructions from Us (written or otherwise) as to the storage, installation, commissioning, use or maintenance of such Goods or (if none were given) failed to comply with good trade practice;
  - 4.3.3 if You alter or repair such Goods without Our written consent;
  - 4.3.4 if the defect arises following any design, drawing, diagram, specification or other technical instruction provided by You;
  - 4.3.5 if the defect arises through willful damage or Your negligence; or
  - 4.3.6 in respect of corrosion, erosion and fair wear and tear.
- 4.4 Subject to Clause 4.2 and 4.3, if any of the Goods do not conform with any of the warranties in Clause 4.1 We shall at our option repair or replace such Goods (or the defective part) or refund the Price (or a pro-rated amount of the Price if not all the Goods are defective) provided that, if We so request, You shall, at Your expense, return the Goods or such of the Goods as are defective to Us.
- 4.5 If We comply with Clause 4.4 we shall have no further liability for a breach of any of the warranties in Clause 4.1. Corrections by Us of nonconformities, whether patent or latent, in the manner and for the period of time provided above, shall constitute fulfilment of all liabilities of Us for such nonconformities - whether based on contract, warranty, negligence, indemnity, strict liability or otherwise, with respect to or arising out of such Goods.
- 4.6 This Clause 4 shall apply in respect of any repaired or replacement Goods for any unexpired part of the 6 month or agreed longer period referred to in Clause 4.1.
- 4.7 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are excluded from the Contract to the fullest extent permitted by law.

- 4.8 Where We are not the manufacturer of the Goods, We will endeavor to transfer to You the benefit of any warranty or guarantee given to Us.
- 4.9 We shall not be liable for any repairs, replacements or adjustments to the Goods or any costs of labour performed by You or others without Our prior written approval.
- 4.10 Performance warranties are limited to those specifically stated within Our proposal. Unless responsibilities are for meeting such performance, warranties are limited to specified shop or field tests.
- 4.11 We exclude all other conditions, warranties or representations of all kinds express or implied, statutory or otherwise (except that of title) including all implied warranties and conditions relating to satisfactory quality and fitness for a particular purpose.

## **5 PRICE**

- 5.1 The price is nett and shall be exclusive of VAT and shall be stated by Us as at the date of dispatch (“Price”). We may alter Prices quoted or stated to take account of any increase in costs sustained by Us after acceptance of Your Order. The Price of the Goods is exclusive of all costs and charges of packing, insurance, transport of the Goods, port rates, custom dues, licence fees or other charges which shall be paid by You when You pay for the Goods. Any discounts deductions or rebates agreed are only available if the Price is paid in full by the due date.
- 5.2 Prices stated or quoted are applicable to the quantity specification delivery dates and information provided by You. If the Order placed varies or delay is caused by Your instructions or lack of instructions, We shall be entitled to adjust the Price.
- 5.3 The Price quoted as payable for the Goods is based upon the manufacture of the Goods being carried out during Our normal working hours (which are from 7:30am to 4:30pm Monday to Thursday inclusive and from 7:30am to 12:30pm on Friday). If You require Us to work outside these hours We shall be entitled to charge You for all overtime worked at the rate to be notified in advance to You in writing.

## **6 ADDITIONAL COSTS**

- 6.1 You agree to pay for any loss or extra cost incurred by Us through Your written instructions or lack of written instructions or through failure or delay in taking delivery or through any act or default on Your behalf, Your servants, agents or employees. We can only comply to written orders, when not received work cannot proceed and will cause delay.
- 6.2 We reserve the right to make an additional charge for any extras ordered in writing by You and not specified in the Order and also for the expense of all inspections, tests, alterations or additions or any other work undertaken at Your request. In particular, but without prejudice to the generality of the foregoing, We may impose a charge for inspecting and/or testing Goods alleged by You to be defective or not in compliance with their contractual description, if We determine that the Goods are not defective and/ or do comply with their contractual description and/or any defects are not the responsibility of Us under the terms of the contract.
- 6.3 The Price is subject to the whole of the Goods proceeding; any variation in the amount of work required will not necessarily vary the price pro rata due to the allocation of fixed costs and rates on any Bill of Quantity, or similar, will be subject to change.
- 6.4 If We encounter any Brexit-related and/or Pandemic/Epidemic Event-related circumstances, We can recover any proven additional cost from You.

## **7 PAYMENT**

- 7.1 If we have agreed in writing to give You credit, all accounts are due for payment into Our bank account without deduction or retention within 30 days of invoice date. Time for payment shall be of the essence.
- 7.2 If Credit is granted it may be reviewed at any time at Our discretion. We reserve the right to refuse to execute any Order or Contract if the arrangements for payment or Your credit rating is not satisfactory to Us. You shall be liable for any loss, damage or expense arising out of any withdrawal or reduction of credit or refusal to supply further Goods in accordance with this clause 7.2 including any loss, damage or expense suffered by Us.
- 7.3 You may not withhold payment of any invoice or other amount due to Us by reason of any right of set off or counterclaim which You may have or allege to have for any reason. Furthermore, it is an express provision herein that no claims shall be set-off by You under an unconnected contract between You and Us.
- 7.4 Without prejudice to the Conditions hereof, if You wish to raise any queries concerning an invoice rendered by Us to You, You must provide a written query to Our Credit Control Department within seven (7) days of the date of the invoice via email or post.
- 7.5 If You fail to give notice in accordance with clause 7.4 above concerning an invoice rendered by Us to You then You will be bound to accept and pay the invoice accordingly.
- 7.6 We shall be entitled to claim interest on the late payment of any amount properly due to Us under the Contract accruing on a daily basis from the due date for payment until payment is made in full, both before and after any judgment, at a rate equal to the rate of statutory interest prescribed for the purposes of the Late Payment of Commercial Debts (Interest) Act 1998 from time to time.
- 7.7 To the extent that We do not exercise Our right to claim interest under Clause 7.6, We reserve the right to claim interest and fixed sum compensation under the Late Payment of Commercial Debts (Interest) Act 1998.
- 7.8 If payment is agreed to be made by instalments, in the event of default in payment of any one instalment, all other sums payable under the Contract shall become due.

## **8 DELIVERY**

- 8.1 Delivery shall occur when the Goods arrive at the delivery address or two (2) Working Days after delivery or collection is offered to You.
- 8.2 If You fail to take or make arrangements to accept delivery or collect the Goods or We are unable to deliver because of inadequate access or instructions delivery shall be deemed to have taken place and We may do any one or more of the following (without prejudice to any other right or remedy We may have):
- 8.2.1 make additional charges for failed delivery;
  - 8.2.2 store the Goods at Your risk and cost;
  - 8.2.3 invoice You for the Goods;
  - 8.2.4 suspend or terminate this contract without liability on Our part;
  - 8.2.5 recover from You all costs and losses incurred by Us.
- 8.3 Delivery dates are given in good faith but are estimates only. Time for delivery shall not be of the essence.

- 8.4 Standard lead times vary according to product. Time estimates will be revised on receipt of Your Order and times will not run until we are in receipt of all information required from You including Your written approvals as requested by Us.
- 8.5 We reserve the right to make delivery by instalments and tender a separate invoice in respect of each instalment. Any claim which You may have in respect of one instalment shall not affect Your liability or entitle you to cancellation in respect of any other instalment.
- 8.6 You will indemnify Us in respect of all Losses incurred as a result of delivery in accordance with Your instructions. This indemnity will be reduced in proportion to the extent that such Losses are due to Our negligence.
- 8.7 The risk in the Goods shall pass to You on delivery as set out in Clauses 8.1 & 8.2 above even if We have agreed to install the Goods. It is Your responsibility to ensure that the Goods are kept safe on site before, during and after installation and are fully insured against fire theft damage and other normal insurance risks for their full replacement costs.
- 8.8 Where goods are handed to a carrier for carriage to You or to United Kingdom port for export any such carrier shall be deemed to be an agent of Us and not of You for the purposes of sections 44, 45 and 46 of the Sale of Goods Act 1979.
- 8.9 Without prejudice to any other provisions of the Terms You shall not have the right to reject any item of Goods if You:
- 8.9.1 ask Us to repair the same or consent for Us to do so
- 8.9.2 resell such item.
- 8.10 Without prejudice, We shall not be liable for loss, damage, detention or delay due to war, riots, civil insurrection or acts of the common enemy, fire, flood, strikes or other labour difficulties, including Our own plants, acts or omissions of You, embargo, transport shortage, damage or delay in transportation, inability to obtain necessary labour or materials from usual sources, faulty forgings or castings or other causes whatsoever beyond reasonable control of Us. In the event of delay in performance due to any such cause the date of delivery of time for completion will be adjusted to reflect the actual length of time lost by reason of such delay to properly reflect the delay. Your acceptance of Goods shall constitute a waiver of any claims for delay.
- 8.11 Where programme is delayed and Goods are received into our warehouse we will charge for materials off site. At this stage you will be required to sign our standard Bill and Holding (Vesting) Agreement letter.
- 8.12 Where deliveries are affected by any Brexit-related and/or Pandemic/Epidemic Event-related circumstances, any consequential delay will be accepted by You.

## **9 INSPECTION**

- 9.1 You shall inspect the Goods at the place and time of unloading but nothing in these Terms shall require You to break packaging and/or unpack Goods which are intended to be stored before use.
- 9.2 Subject to Clause 4 unless You advise Us by telephone immediately and written notice is received by Us within seven (7) Working Days of unloading or the date of the invoice for non-delivery of any claim for loss, damage, short delivery or failure to conform to the contract, apparent on inspection the Goods will be deemed to have been delivered in accordance with the delivery documents and You shall not be entitled to reject the Goods.
- 9.3 Our liability for loss, damage, short delivery or failure of the Goods to conform to the contract which is apparent on inspection is limited to supplying the Goods as ordered or crediting part of the Price and

We shall not be liable for any damages whatsoever. You remain liable to pay the full invoice Price of Goods delivered in accordance with the contract. Any other claim for damages is subject to Clause 12.

## **10 TITLE**

10.1 The title to the Goods shall remain with Us until You pay the Price of the Goods in full and any other sums outstanding between You and Us whether in respect of this contract or otherwise.

10.2 Until title passes:

10.2.1 You shall hold the Goods as Our fiduciary agent and bailee;

10.2.2 The Goods shall be stored separately from any other goods and You shall not interfere with any identification marks labels batch numbers or serial numbers on the Goods;

10.2.3 We agree that You may use or agree to sell the Goods as principal and not as Our agents in the ordinary course of Your business subject to the following express conditions:-

- a) that You notify Your customer that We remain the legal owner of the Goods until We receive payment in accordance with Clause 10.1 and We reserve the right to label the Goods accordingly;
- b) that You will at Our request and at Your expense assign to Us all rights You may have against Your Customer; and
- c) that Your right to use or sell the Goods may be withdrawn by Us on notice at any time and will automatically cease in the event of Your becoming Insolvent.

10.3 If Goods are to become affixed to any land or building You must ensure that they are capable of removal without material injury to the land or building and You shall take all necessary steps to prevent title to the Goods from passing to the owner or landlord of such land or building.

10.4 We shall be entitled at any time to recover any or all of the Goods to which We have title and for that purpose 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.

## **11 INSTALLATION**

11.1 Where we have agreed to install the Goods, unless otherwise stated we assume the installation is to be carried out at ground floor level or adequate elevators, lifts or hoists are provided by You to move the Goods efficiently and safely to the place of installation and you must ensure that:

11.1.1 adequate access of the relevant size for the Goods is provided;

11.1.2 the site is ready at the agreed time for installation to commence;

11.1.3 the programme of works allows for installation to be completed within Our normal working hours;

11.1.4 access to the site is available at the times necessary to complete installation;

11.1.5 Our installation will not be delayed nor interrupted;

11.1.6 adequate lighting heating and power supplies are provided;



- 11.1.7 carpets, furniture and other vulnerable items are protected;
  - 11.1.8 a safe and appropriate working environment in accordance with the British Standard Code of practice for safe working in occupied and unoccupied parts of the site is provided for Our employees and agents.
- 11.2 If (in Our sole discretion) any of the above Conditions are not met We shall be entitled (without prejudice to any other right or remedy We may have) to:
- 11.2.1 immediately suspend Our obligation to install the Goods without liability on Our part and if the Conditions are not met within a further seven (7) Working Days thereafter cancel Our obligation to install and recover from You all losses damages costs and expenses incurred including any claims by any Third Party; and/or
  - 11.2.2 charge You for additional costs incurred in completing the installation including but not limited to travel and overtime rates for labour.
- 11.3 If We agree to undertake the installation of Goods supplied by Us we reserve the right to instruct or employ a subcontractor of Our choice for that purpose, passing on any contact and address details as necessary.
- 11.4 We will not be responsible for faults resulting from the incorrect installation of equipment by You, Your representatives or agents. In such a case it is Your responsibility to commission and test the installation and to arrange at Your cost for any faults to be rectified.
- 11.5 If We agree to undertake the installation of Goods supplied by Us, for any duration of the work being installed, we reserve the right to be entitled to payment by instalments, stage payments or other periodic payments for any work under the contract, tendering a separate invoice for each instalment, stage or other period, as the case may be.
- 11.6 Where the installation of Goods supplied by Us is affected by any Brexit-related and/or Pandemic/Epidemic Event-related circumstances, any consequential delay will be accepted by You.

## **12 LIABILITIES**

- 12.1 Nothing in these Terms shall limit or exclude Our liability for:
- 12.1.1 death or personal injury caused by Our negligence, or the negligence of its employees, agents or subcontractors;
  - 12.1.2 fraud or fraudulent misrepresentation;
  - 12.1.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);
  - 12.1.4 breach of terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession); or
  - 12.1.5 defective products under the Consumer Protection Act 1987;
  - 12.1.6 for any act, omission or matter, liability for which may not be legally excluded or limited.

**(The Purchaser's attention is drawn to the provisions of Clause 12.2 below)**

- 12.2 Subject to Clauses 12.1:

12.2.1 Our total liability arising under or in connection with this Contract, whether arising in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise howsoever, shall in no circumstances exceed the Price of the Goods or the limit of liability laid down by Our insurers in respect of such claim, whichever is the higher.

12.2.2 We shall not have any liability to You, whether arising in contract, tort (including negligence), breach of statutory duty or restitution, or for misrepresentation, or otherwise howsoever, for any loss of profit, loss of business, depletion of goodwill or any indirect or consequential loss whatsoever arising out of or in connection with the Contract.

**(The Purchaser's attention is particularly drawn to the provisions of Clause 12.3 below)**

- 12.3 The presence of nickel sulphide (NiS) inclusions may cause toughened glass to spontaneously break after installation. This is a rare but naturally occurring phenomenon in the float glass manufacturing process. The risk of toughened glass spontaneously breaking due to the presence of critical NiS can be reduced (but not eliminated) by subjecting the glass to heat soaking treatment. We shall not be liable for any costs howsoever incurred by You, Your client, or by any end user in respect of any issue arising from spontaneous breakage of toughened glass (whether heat treated or not) as a result of NiS.

### **13 INTELLECTUAL PROPERTY RIGHTS**

- 13.1 All rights, including any copyright or other Intellectual Property Rights, in the Goods and any supplier materials shall, unless otherwise agreed in writing between the parties, belong to Us, subject only to a license in favour of You to use the supplier materials for the purposes of receiving the Goods.
- 13.2 If the Goods are to be manufactured to a specification provided by You, You shall indemnify and keep indemnified Us in full and hold it harmless on demand from and against any and all Losses suffered or incurred by Us or for which We may become liable arising out of or in connection with any claim made against Us for alleged or actual infringement of a third party's Intellectual Property Rights in connection with Our use of such specification and this Clause 13.2 shall survive termination of the Contract.

### **14 DEFAULT & TERMINATION**

- 14.1 We may terminate this Contract with immediate effect (without prejudice to any other rights or remedies We may have) on giving notice to You if You:
- 14.1.1 commit a material or persistent breach of Contract;
  - 14.1.2 in Our reasonable belief or are deemed to be Insolvent or unable or (being an individual) is deemed to have no reasonable prospect of being able (or admits its inability) to pay its debts as they fall due or stops or suspends payment of any of its debts (or (being a partnership) has any partner to whom any of the foregoing apply);
  - 14.1.3 any of Your Indebtedness is not paid in full when due or becomes due (or could be declared due) before its stated maturity because of default;
  - 14.1.4 any expropriation, attachment, sequestration, distress, execution, enforcement of security or other legal process is levied, enforced or sued out on or against, or affects, any of Your assets and is not discharged or stayed within twenty one (21) days;
  - 14.1.5 You begin negotiations, or enter into, or give notice of any intention to enter into, any composition or arrangement, with one or more of Your creditors in order to reschedule any of Your indebtedness because of actual or anticipated financial difficulties including, but not limited to, giving notice of a meeting of creditors for the purpose of considering a proposal for a company voluntary arrangement or (being an individual) an individual voluntary arrangement;

- 14.1.6 a moratorium is declared, or in any event comes into existence, over any of Your Indebtedness;
- 14.1.7 any petition is presented, application made, resolution proposed, notice of meeting given or other action, proceedings, procedure or step taken whether by You or any third party for, or which may lead to:
- a) the suspension of payments, winding up, dissolution, administration, receiverships (whether administrative or otherwise) or reorganisation (using a voluntary arrangement, scheme of arrangement or otherwise) of You;
  - b) the appointment of a liquidator (both provisional and following a winding up), receiver (including a fixed charge receiver), administrative receiver, administrator, nominee supervisor, compulsory manager or other similar officer in respect of You or any of Your assets; or
  - c) (where You as an individual) bankruptcy, an individual voluntary arrangement or debt relief order;
- 14.1.8 any event similar to any of those set out in Clauses 14.1.2 to 14.1.7 occurs in relation to You (including in any jurisdiction to which it is subject);
- 14.1.9 You suspend or cease to carry on (or threatens to suspend or cease to carry on) all or a material part of its business;
- 14.1.10 You (being an individual) die or, by reason of illness or incapacity (whether mental or physical) is incapable of managing his own affairs or becomes a patient under any mental health legislation; or
- 14.1.11 Your financial position deteriorates to such an extent that in Our reasonable opinion Your capability to adequately fulfil Your obligations under the Contract has been placed in jeopardy.
- 14.2 On termination of the Contract or any part of it for any reason, You shall immediately return to Us all supplier materials. If You fail to do so We may (without limiting any other rights and remedies We may have) enter Your premises and take possession of them. Until they have been returned or repossessed, You shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract.
- 14.3 The termination of the Contract for any reason shall not affect any accrued rights, remedies, obligations or liabilities existing at termination.
- 14.4 Such of these Terms which expressly or by implication are intended to come into or remain in force on or after the termination of the Contract shall remain in full force and effect.

## **15 EXPORT TERMS**

- 15.1 Where the Goods are supplied for export from the United Kingdom the provisions of this Clause 15 shall apply notwithstanding any provision of these Terms.
- 15.2 In any case where Goods are sold Cost, Insurance and Freight (CIF) or Free on Board (FOB) or on the basis of any other international trade term the meaning of such terms contained in Incoterms (2010) shall apply but if there is any conflict between the provisions of Incoterms and these Terms the latter shall prevail.
- 15.3 In the case of any sale of Goods FOB We shall be under no obligation to give You notice specified in section 32(3) of the Sale of Goods Act 1979.

- 15.4 You shall be responsible for arranging for inspection of the Goods at Our premises before shipment.
- 15.5 We shall have no liability for any claim in respect of any defect in the Goods which would have been apparent on inspection and which is made after shipment or in respect of any damage under transit.
- 15.6 Payment of all amounts due to Us shall be made by irrevocable letter of credit opened by You in favour of Us and confirmed by a United Kingdom clearing bank acceptable to Us or any other method of payment agreed by Us in writing by a Company Signatory.
- 15.7 You will be responsible for all tariffs levied at border controls due to Brexit-related circumstances.
- 15.8 Your Order will not be accepted by Us until We have evidence of the letter of credit or bill of exchange as the case may be. All costs and charges incurred by us in negotiating and accepting payment methods shall be added to the Price of the Goods.
- 15.9 This payment clause shall also apply if You are resident outside the United Kingdom.

## **16 DISCLAIMER**

- 16.1 Prior to installation of the Glass Goods You may have requested that a Decorative Film is applied to the Glass Goods. The addition of a Decorative Film may reduce the safety aspects of the Glass Goods, therefore We advise You that a Clear Safety Film should also be applied to the Glass Goods.
- 16.2 If You purchase the Glass Goods from Us and You refuse to have a Clear Safety Film applied, then You must read and sign the Disclaimer. In the event that You refuse the application of a Clear Safety Film and You will not sign the Disclaimer then We will not apply Decorative Film to the Glass Goods for You.

## **17 FORCE MAJEURE**

- 17.1 If either party is delayed or prevented in the performance of any of its obligations under the Contract by an event, circumstance or cause beyond its reasonable control which, by its nature, could not have been foreseen or, if foreseeable, was unavoidable, (including war or other armed conflict, terrorism, riot, civil commotion, interference by civil or military authorities, national or international emergency or calamity, strikes, lock-outs or other industrial disputes, (whether involving its own workforce or any third party's), failure of energy supply, disruption to transport, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of buildings or other structures, fires, floods, storms, earthquakes, natural disasters, extreme adverse weather conditions, other acts of God, loss at sea, epidemics or similar events and default of suppliers or sub-contractors caused by any such event), that party shall not be liable for such delay or non-performance and the time for performance of the affected obligation shall be extended by such period as is reasonable to enable that party, using all reasonable endeavors, to perform that obligation.
- 17.2 If the performance of any of Our obligations under the Contract are delayed or prevented as described in Clause 17.1 for a continuous period of one (1) month, We may terminate the Contract, without liability to You, by giving You notice.

## **18 COMMUNICATIONS**

- 18.1 Any communication between the parties about the Contract shall be in writing, in English, and delivered personally, sent by pre-paid registered post or recorded delivery (or pre-paid registered air mail if overseas) or by fax:
- 18.1.1 (in the case of communications to Us) to Our registered office or main fax number or such changed address or fax number as shall be notified to You by Us; or

- 18.1.2 (in the case of communications to You) to Your registered office (if it is a company) or (in any other case) to any address notified to Us or to its main fax number or such other address or fax number as shall be notified to Us.
- 18.2 Communications shall be deemed to have been received:
- 18.2.1 if delivered personally, at the time of delivery to the address;
- 18.2.2 if sent by pre-paid registered post or recorded delivery, 48 hours after posting;
- 18.2.3 if sent by pre-paid registered airmail, at 9.00am on the fifth Working Day after posting; and
- 18.2.4 if sent by fax, at 9.00am on the next Working Day after transmission provided a transmission report is generated by the sending party's fax machine recording a message from the recipient party's fax machine confirming all pages were successfully transmitted.
- 18.3 Communications addressed to the Us shall be marked for the attention of the Installation Director.
- 18.4 This Clause 18 does not apply to the service of any proceedings or other documents in any legal action or any arbitration or other method of dispute resolution.

## **19 GENERAL**

- 19.1 This Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes and claims) shall be governed and construed in accordance with the law of England and Wales and the parties irrevocably agree that the courts of England and Wales shall have non-exclusive jurisdiction.
- 19.2 A failure to exercise, or delay in exercising a right, power or remedy provided to Us by these Terms or by law does not constitute a waiver of that, or any other, right, power or remedy and shall not (and nor shall any single or partial exercise of any such right, power or remedy) preclude the further exercise of that, or any other, right, power or remedy.
- 19.3 Any waiver by Us of any breach or default of these Terms shall not be construed as a continued waiver of that breach nor as a waiver of any subsequent breach of the same or any other provision.
- 19.4 If any provision, or part of a provision, of the Contract is found by any court or administrative body of competent jurisdiction to be invalid, illegal or unenforceable (a "void provision") such invalidity, illegality or unenforceability shall not affect the other provisions of the Contract, which shall remain in full force and effect. If a void provision would be valid, legal and enforceable if some part of it were deleted, that void provision shall apply with such modification as may be necessary to make it valid, legal and enforceable and if it cannot be made valid, legal and enforceable it shall be deemed to be deleted.
- 19.5 We accept no responsibility, whether by reason of breach of contract, duty or in tort otherwise, for loss or damage to free issue materials or components supplied to it. Such materials or components are not insured by Us and You should therefore arrange adequate insurance cover.
- 19.6 We do not accept Liquidated & Ascertained Damages ("LAD's").
- 19.7 No statement, description, information, warranty, condition or recommendation contained in any catalogue, price list, advertisement or communication or made verbally by any of Our agents or employees shall be construed to enlarge, vary or override in any way these Terms.

- 19.8 If the Housing Grants Construction & Regeneration Act 1996 Part II applies to this contract the Scheme under that Act shall apply and take precedence in the event of conflict between the Scheme and these Terms.
- 19.9 We may assign, or deal in any other manner with, the Contract or any part of it, including sub-contracting any of Our obligations under the Contract to any third party or agent. You shall not be entitled to assign, or deal in any other manner with, the Contract, without Our prior written consent.
- 19.10 Termination of this contract shall not affect rights and obligations which have already accrued at the time of termination.
- 19.11 These Terms shall have precedence over any other contractual documentation you may receive or enter into with Us. If there are any inconsistencies between any documentation between Us and You, these Terms shall have precedence.
- 19.12 No provision of the Contract shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to the Contract.