

These are the standard terms and conditions of sale of dualseal and shall override any terms or conditions of the Buyer. The Buyer agrees to be bound by and comply with these terms and conditions. The Buyer's attention is particularly drawn to clause 7.

## 1. Interpretation

### 1.1. Definitions:

**Business Day:** a day (other than Saturday, Sunday or public holiday) when banks in London are open for business.

**Buyer:** means the person, firm or company purchasing the Goods.

**Conditions:** the terms and conditions set out in this document as amended from time to time in accordance with clause 14.4.

**Contract:** the contract between the Seller and the Buyer for the sale and purchase of the Goods in accordance with these Conditions.

**Final Quotation:** the Seller's final price for the supply of the Goods.

**Force Majeure Event:** an event or circumstance beyond a party's reasonable control as set out in clause 10.

**Goods:** means all materials and products set out in the Order.

**Intellectual Property Rights:** patents, copyright and related rights, trade marks, business names and domain names, database rights, know-how and trade secrets, and all other intellectual property rights, registered or unregistered, in any part of the world.

**Order:** the Buyer's order for the Goods, as set out in the Seller's Order Confirmation.

**Order Confirmation:** the Seller's written acceptance of the Buyer's Order.

**Seller:** means dualseal registered in England and Wales with company number 03036278 whose registered office is at 403 Leeds Road, Huddersfield, West Yorkshire, HD2 1XU.

**Specification:** any specification for the Goods, that is agreed in writing by the Seller and the Buyer.

### 1.2 Interpretation:

**a)** a reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.

**b)** any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

**c)** a reference to writing or written includes emails.

## 2. Basis of contract

**2.1** These Conditions apply to the Contract to the exclusion of any other terms that the Buyer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

**2.2** The Order constitutes an offer by the Buyer to purchase the Goods in accordance with these Conditions. The Buyer is responsible for ensuring that the terms of the Order and any applicable Specification submitted by the Buyer, are complete and accurate.

**2.3** The Order shall only be deemed to be accepted when the Seller issues written acceptance of the Order in an Order Confirmation, at which point the Contract shall come into existence.

**2.4** Any samples, drawings, illustrations, descriptive matter or advertising produced by the Seller and any descriptions or illustrations contained in the Seller's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods referred to in them. They shall not form part of the Contract nor have any contractual force.

**2.5** A quotation for the Goods given by the Seller shall not constitute an offer. A quotation shall only be valid for a period of 30 days from its date of issue.

## 3. Goods

**3.1** The Goods are described in the Seller's Order Confirmation. To the extent that the Goods are to be manufactured in accordance with a Specification supplied by the Buyer, the Buyer shall indemnify the Seller against all liabilities, costs, expenses, damages and losses (including legal and other professional costs and expenses) suffered or incurred by the Seller in connection with any claim made against the Seller for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Seller's use of the Specification. This clause 3.1 shall survive termination of the Contract.

**3.2** The Seller reserves the right to amend the specification of the Goods if required by any applicable statutory or regulatory requirements and to amend the price of the Goods accordingly.

## 4. Price and payment

**4.1** The price of the Goods shall be the price set out in the Seller's Final Quotation or Order Confirmation.

**4.2** Any price quoted or published by the Seller, unless otherwise specifically stated, is deemed to have been calculated on the costs current at the date of the quotation or publication.

**4.3** The Seller may before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:

- a)** any factor beyond the Seller's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
- b)** any request by the Buyer to change the delivery date(s), address, quantities or types of Goods ordered, or the Specification; or
- c)** any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate or accurate information or instructions.

### 4.4 The price of the Goods:

- a)** excludes amounts in respect of value added tax (VAT), which the Buyer shall additionally be liable to pay to the Seller at the prevailing rate, subject to the receipt of a valid VAT invoice;
- b)** excludes the costs and charges of packaging, insurance and transport of the Goods, which shall be invoiced to the Buyer unless otherwise agreed in writing; and
- c)** excludes the cost of an energy surcharge, which the Buyer shall additionally be liable to pay. Details of this charge are available from the Seller upon request.

**4.5** The Seller may invoice the Buyer for the Goods either on completion of delivery or at any time after;

- a)** manufacture (where delivery has been delayed); or
- b)** completion of delivery.

**4.6** The Seller may also at its discretion, require an advance payment for the Goods, or payment on account from the Buyer. If such a payment is requested by the Seller, the Seller shall not deliver any Goods until cleared funds are received by the Seller. The Seller shall not be liable for any costs incurred whether directly or indirectly, arising from the non-delivery of Goods in those circumstances.

**4.7** The Buyer shall pay the invoice in full and in cleared funds within 30 days of the date of the invoice unless otherwise agreed in writing. Payment shall be made to the bank account nominated in writing by the Seller. Time for payment is of the essence.

**4.8** The Buyer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). The Seller may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Buyer against any amount payable by the Seller to the Buyer.

**4.9** If the Buyer makes default on payment, payment in respect of all Goods delivered but not paid for, shall immediately become due and payment in respect of any Goods delivered during the continuance of such default shall become due immediately upon delivery. The Seller reserves the right to charge interest at the rate of 4% over the National Westminster Bank PLC base rate on any amounts not paid at the due date.

## 5. Delivery

**5.1** Any time or date for the dispatch or delivery of the Goods shall be taken as an estimate made by the Seller in good faith but shall not be binding upon the Seller either as a term of the Contract or otherwise. The Seller shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Buyer's failure to provide the Seller with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

**5.2** Where delivery of an order is made by instalments, each delivery shall be deemed for such purposes to be the subject of a separate contract. Any failure whatsoever by the Seller in respect of any one delivery shall not entitle the Buyer to repudiate the order or any instalments remaining to be delivered thereunder.

**5.3** Where the Seller agrees to deliver the Goods to the Buyer's premises or premises nominated by the Buyer (Delivery Location), the unloading of the Goods shall be the responsibility of the Seller. If the unloading of the Goods is delayed for any reason, the Seller reserves the right to apply a surcharge calculated on a time and cost basis.

**5.4** Where the Goods are to be collected from the Seller's premises, the loading of the Goods shall be the responsibility of the Buyer.

**5.5** Delivery is completed when the Goods are unloaded at the Delivery Location or when the Goods are ready for collection.

**5.6** If for any reason the Buyer is unable to collect or accept delivery of the Goods within 3 Business Days of the Seller notifying the Buyer that the Goods are ready for collection or delivery, then, except where such failure or delay is caused by a Force Majeure Event:

**a)** the Seller may if its storage facilities permit and at its discretion, store the Goods until such time as the Buyer is able to collect or accept delivery of the Goods. In such circumstances and subject to these Conditions, the Goods will be stored entirely at the Buyer's risk and the Buyer shall pay the Seller a reasonable sum calculated at the current market rate in respect of the grant of such storage facilities; and  
**b)** delivery of the Goods shall be deemed to have been completed at 9.00am on the third Business Day after the day on which the Seller notified the Buyer that the Goods were ready for collection or delivery.

**5.7** If ten Business Days after the day on which the Seller notified the Buyer that the Goods were ready for delivery, the Buyer has not taken or accepted delivery of the Goods, the Seller may resell or otherwise dispose of part or all of the Goods and charge the Buyer for any shortfall below the price of the Goods.

**5.8** Where the Buyer requires the Seller to deliver the Goods other than to the Buyer's premises, this must be clearly stated in writing when the Order is submitted and is subject to the Seller's acceptance of the Order. The Seller may apply a service charge calculated in accordance with the rates current at the date of dispatch.

**5.9** Where pallets, stillages, packages or like items have been supplied by the Seller for the purposes of effecting delivery of the Goods to the Buyer, the Buyer shall be responsible for returning them, carriage paid and in good condition to the Seller within 28 days. Any reuse of such equipment by the Buyer is entirely at the Buyer's own risk. If the Seller 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 Seller as aforesaid and the Buyer has made payment in respect of those sums.

**5.10** On arrival of the Goods at the place of delivery, the Buyer shall promptly provide unloading facilities and when the Goods are ready to be unloaded, shall unload the Goods promptly. The Seller shall be entitled to recover from the Buyer all and any costs and expenses incurred as a result of the Buyer's failure to do so. Any assistance given by the Seller or its agents in respect of any unloading of the Goods is at the risk of the Buyer.

**5.11** The Buyer shall be responsible for the correct use, storage and/or installation of the Goods in accordance with industry published guidelines.

**5.12** The handling, working or carrying of the Buyer's materials by the Seller or its appointed agents shall be entirely at the risk of the Buyer.

## 6. Inspection and defects

**6.1** Where Goods are collected by the Buyer or its agents from the Seller's premises, it shall be the responsibility of the Buyer or its agents to inspect the Goods before removing the same from the Seller's premises. Upon such removal, the Buyer will be deemed to have accepted the Goods and the Seller shall be under no liability for any loss or damage to the Goods which occurs or may have occurred after the removal of the Goods from its premises.

**6.2** Where the Goods are delivered by the Seller or its agents to the Buyer's premises or an address nominated by the Buyer, it shall be the responsibility of the Buyer to inspect the Goods within a reasonable period of time and in any event within 3 days from the date of delivery. Goods alleged by the Buyer to be defective must be held by the Buyer at its expense and risk so as to enable the Seller or its agents to carry out inspection of the same within 14 days of receipt of a written notice of complaint. The notice shall include details of each, and every defect complained of in respect of each individual item supplied. If the Seller confirms that the Goods are defective, it will at its sole discretion replace any defective Goods free of charge or alternatively, credit the Buyer with the value of the same.

## 7. Quality and warranty: please read this clause carefully

**7.1 Subject to clause 6**, the Seller warrants that on completion of delivery, the Goods shall:

**a)** conform with their description and any agreed Specification;  
**b)** be free from material defects in design, material and workmanship;  
**c)** be of satisfactory quality; and  
**d)** conform to appropriate European Standards (where applicable) or to recognised industry standards defined and published by the Glass and Glazing Federation.

### 7.2 Subject to clause 7.1, if:

**a)** the Buyer gives notice in writing to the Seller within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 7.1;  
**b)** the Seller is given a reasonable opportunity of examining such Goods;  
**c)** the Buyer (if asked to do so by the Seller) returns such Goods to the Seller's place of business at the Seller's cost;  
**d)** the Seller at its discretion concludes that the Goods are defective; and  
**e)** all Goods have been paid for in full by the due date for payment,  
the Seller shall at its option, repair or replace the Goods manufactured by the Seller or pay the reasonable cost of replacing the Goods. The repairing or replacement of any Goods shall not include any costs associated with the replacement of the Goods (including but not limited to) such as installation, fitting, handling, storage of any panels or items, site access and any glazing or decoration of the Goods.

**7.3** Having inspected the Goods, if the Seller concludes that the Goods are not defective, the Buyer shall be responsible for any cost associated with the inspection e.g. site access costs.

**7.4** The Seller shall not be liable for the Goods' failure to comply with the warranty set out in clause 7 in any of the following events:

**a)** the defect arises because the Buyer failed to follow the Seller's oral or written instructions as to the storage, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;  
**b)** the defect arises as a result of the Seller following any drawing, design or Specification supplied by the Buyer;  
**c)** the Buyer alters or repairs such Goods without the written consent of the Seller;  
**d)** the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions;  
**e)** the Goods differ from their description or the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements; and  
**f)** goods affected by influences beyond the control of the Seller including, but not limited to; incorrect installation, poor maintenance, building subsidence or movement, frame distortion, nickel sulphide or other inclusions found in glass, the optical phenomenon known as Brewster's Fringes and spontaneous breakage.

**7.5** Where Goods are supplied by the Seller but manufactured by another company, the benefit of any warranties or guarantees given to the Seller by such manufacturer or supplier will wherever practicable, be passed to the Buyer, subject to the conditions (including maintenance requirements) under which they are given.

**7.6** Specification of the correct glass in accordance with EN 952 Glass for glazing Parts 1 and 2 and the relevant European Standard for glass in buildings and/or other statutory requirements is the responsibility of the Buyer.

**7.7** No condition is made or is to be implied or any warranty given or implied as to whether the Goods supplied are suitable for any particular purpose or for use under specific conditions notwithstanding that such purpose or condition may be known or made known to the Seller.

**7.8** Except as provided in this clause 7, the Seller shall have no liability to the Buyer in respect of the Goods' failure to comply with the warranty set out in clause 7.1.

**7.9** The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.

**7.10** These Conditions shall apply to any repaired or replacement Goods manufactured and supplied by the Seller.

## 8. Risk

**8.1** The risk in the Goods shall pass to the Buyer on the earlier of:

- a)** notification to the Buyer of the Goods being ready for collection; or
- b)** unloading of the Goods at the Buyer's premises or other nominated address.

**8.2** Where pallets, stillages or like items are supplied by the Seller for the purpose of effecting delivery of the Goods to the Buyer, the risk of loss of or damage to such items shall be with the Buyer until such time as the Buyer returns them to the Seller.

## 9. Title

**9.1** The title to the Goods shall not pass to the Buyer until the Seller receives payment in full (in cleared funds) for the Goods in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums.

**9.2** Until title to the Goods has passed to the Buyer, the Buyer shall:

- a)** hold the Goods as bailee for the Seller until such time as the full price thereof is paid to the Seller but that the risk in goods shall pass to the Buyer in accordance with clause 8; and
- b)** store the Goods separately from the Buyer's own Goods or those of any other person and in a manner that makes them readily identifiable as the Goods of the Seller.

**9.3** The Buyer is licensed by the Seller to agree to sell the Goods, subject to the express condition that such sale shall be made by the Buyer as agent and bailee for the Seller whether the Buyer sells on his or her own account or not, and that the entire proceeds thereof are held in trust for the Seller until payment of the agreed price and are not mixed with other monies and shall be at all times identifiable as the Seller's monies.

**9.4** If the Buyer has not received the proceeds of any such sale, the Buyer shall, within seven days of being asked to do so by the Seller, assign to the

**9.5** Seller all rights against the person or persons to whom the Buyer has supplied the Goods.

**9.6** The Buyer's right to possession of the Goods shall cease if the Buyer, not being a company, commits an act of bankruptcy or if, being a company, does anything which if done by an individual would constitute an act of bankruptcy or does anything or fails to do anything which would entitle a Receiver to take possession of any assets or which would enable any person to present a petition for winding-up. Upon such an event the Seller may suspend further deliveries and may determine any contract then subsisting for the sale of Goods without prejudice to any right or claim then vested in the Seller against the Buyer and the Seller may for the purpose of recovery of the Goods pursuant upon this condition, enter any premises where they are stored or where they are reasonably thought to be stored and may repossess the same.

## 10. Force majeure

**10.1** Neither party shall be in breach of this Contract nor liable for any delay in performing, or failure to perform, any of its obligations under this Contract if such delay or failure result from a Force Majeure Event.

**10.2** If, due to a Force Majeure Event, a party:

- a)** is or is likely to be unable to perform any of its obligations under this Contract; or
- b)** is or is likely to be delayed in or prevented from performing its obligations for a continuous period of more than 40 Business Days, either party may terminate this Contract on 7 days' written notice.

**10.3** For the purposes of these conditions, the term "Force Majeure" includes but is not limited to, acts of God, strikes, lock outs, other industrial action, fire, accident, lightning, earthquakes, storms, floods, explosion, war, shipment delays by third parties, disease, pandemic, epidemic, law, or governmental order, rule, regulation or direction, judgment, order, breakdown of the Seller's plant and equipment and any other circumstances, whether similar or dissimilar, beyond the reasonable control of either party.

## 11. Liability

**11.1** Nothing in these Conditions shall limit or exclude the Seller's liability for:

- a)** death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
- b)** fraud or fraudulent misrepresentation;
- c)** breach of the terms implied by section 12 of the Sale of Goods Act 1979; and
- d)** any matter in respect of which it would be unlawful for the Seller to exclude or restrict liability.

**11.2** Subject to clause 11.1:

- a)** the Seller shall under no circumstances whatsoever be liable to the Buyer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract for:
  - i.)** loss of profits;
  - ii.)** loss of sales or business;
  - iii.)** loss of agreements or contracts;
  - iv.)** loss of anticipated savings;
  - v.)** loss of data or information;
  - vi.)** loss of or damage to goodwill; and
  - vii.)** any special, indirect or consequential loss.

- b)** the Seller's total liability to the Buyer, whether in Contract, tort (including negligence), breach of statutory duty or otherwise, arising under or in connection with the Contract, shall be limited to the total charges paid under the Contract.

## 12. Termination

**12.1** Without limiting its other rights or remedies, the Seller may:

- a)** require payment in advance for all or any prior existing and/or further deliveries;
- b)** suspend any further deliveries until any default or breach, if capable of rectification, is rectified;
- c)** terminate this Contract with immediate effect; and
- d)** terminate any other contract so far as any goods remain to be delivered thereunder, by giving written notice to the Buyer if any of the following happens:

- a)** the Buyer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of being notified in writing to do so;
- b)** the Buyer fails to pay any amount due under this Contract on the due date for payment; and
- c)** the Buyer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction; the Buyer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or the Buyer's financial position deteriorates to such an extent that in the Seller's

opinion, the Buyer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

**12.2** On termination of the Contract for any reason, the Buyer shall immediately pay to the Seller, all of the Seller's outstanding unpaid invoices.

**12.3** Termination of the Contract shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of this Contract that existed at or before the date of termination.

**12.4** Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.

### 13. Intellectual property rights

**13.1** All Intellectual Property Rights which exist or arise out of or in connection with the Goods (other than Intellectual Property Rights in any materials provided by the Buyer) shall be owned by the Seller. This includes the Seller's trade marks and the Buyer is not permitted to use any of the Seller's trade marks without the prior written consent of the Seller.

**13.2** The Buyer grants the Seller a fully paid-up, non-exclusive, royalty-free licence to copy and modify any materials provided by the Buyer to the Seller for the term of the Contract for the purpose of providing the Goods to the Buyer.

## 14. General

### 14.1 Assignment

**a)** The Seller may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

**b)** The Buyer may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of the Seller.

### 14.2 Confidentiality

Each party undertakes that it shall not at any time for a period of 2 years after termination of this agreement, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 14.2a);

**a)** Each party may disclose the other party's confidential information:

**i.)** to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this agreement. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 14.2; and

**ii.)** as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

**b)** No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this agreement.

### 14.3 Entire agreement

**a)** This Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

**b)** Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in this Contract.

### 14.4 Variation

No variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

### 14.5 Waiver

No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

### 14.6 Severance

If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

### 14.7 Notices

**a)** Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service, commercial courier, or email.

**b)** A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 14.7a); if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by email, one Business Day after transmission.

**c)** The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

### 14.8 Third party rights

No one other than a party to this Contract shall have any right to enforce any of its terms.

### 14.9 Governing law

The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the law of England and Wales.

### 14.10 Jurisdiction

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Contract or its subject matter or formation.

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