

TRIPLE WARM SEALED UNITS LIMITED

CONDITIONS OF SALE

1. Incorporation

- (a) Unless otherwise expressly agreed in writing by the Seller, these Conditions, which supersede any earlier conditions appearing in the Seller's catalogues or elsewhere, shall override any terms or conditions stipulated, incorporated or referred to by the Buyer. Save as is expressly agreed in writing by the Seller or as is expressly provided in these Conditions all guarantees, warranties, conditions, representations or stipulations whether express or implied and whether arising hereunder or under any prior agreement or statement, or by statute, common law or otherwise are hereby excluded and negated, provided that nothing in this clause or elsewhere in these Conditions shall operate to exclude the provision of Section 12 of the Sale of Goods Act 1979 (as amended) or to exclude or restrict liability for death or personal injury resulting from the Seller's negligence.
- (b) These conditions are open to negotiation before the Buyer's order is accepted by the Seller. All prices quoted, published or otherwise referred to are put forward against these Conditions and are subject to alteration if these Conditions are amended. Any reference to "the Seller" in this Contract or any other contract of sale of Glass Products to the Buyer shall refer to Triple Warm Sealed Units Limited and/or any of its associated companies as defined in Section 736 of the Companies Act 1985. All such contracts shall be subject to these conditions or to these conditions as amended by written agreement of the Seller and the Buyer as the case may be.

2. Prices and Tolerances

- (a) **PRICES QUOTED DO NOT INCLUDE V.A.T. WHICH, WHERE APPROPRIATE IS CHARGEABLE IN ADDITION, AND ARE SUBJECT TO CHANGE WITHOUT NOTICE. PRICES CHARGED ARE THOSE APPLICABLE TO THE GOODS AT THE DATE OF DESPATCH.**
- (b) **OPTICAL AND DIMENSIONAL PROPERTIES OF THE GOODS ARE SUBJECT TO THE TOLERANCES SPECIFIED IN THE TRIPLE WARM SEALED UNITS LIMITED QUALITY STANDARD, COPIES OF WHICH ARE AVAILABLE ON REQUEST.**

3. Payment

- (a) Unless otherwise stated in writing, payment is due on or before the last day of the month next following the month in which despatch is made. If the Buyer makes default in 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 any such default shall become due immediately upon delivery. Time for payment shall be of the essence.
- (b) Any negotiated settlement discounts will be confirmed in writing. Confirmed settlement discount will only be allowed for payment in full received by the due date. If the Buyer fails to make any payment by the due date then the Seller may without prejudice to any other remedy available, appropriate any payment made by the Buyer to such goods as the Seller may think fit.
- (c) Interest shall be payable on overdue payments from the date upon which payment is due at the rate of 3% per annum above the Base Lending Rate of the Midland Bank plc in operation at the date upon which payment was due.

4. Delivery

- (a) Unless otherwise agreed in writing the place of delivery shall be the Buyer's normal place of business. In the case of orders for export the place of delivery shall be the Seller's premises.
- (b) Any time given or accepted by the Seller for delivery shall be treated only as an estimate and the Seller does not accept any contractual obligation as to time or date of delivery. The Buyer acknowledges that in the contractual performance expected of the Seller no regard has been paid to any given, accepted or desired, delivery time or date and that no loss or damage can be attributed to the circumstance (should it so be) that delivery has not been completed by any such or any other time or date.
- (c) Where delivery is to be made by instalments, each delivery shall be deemed for such purpose to be the subject of a separate contract and any failure whatsoever by the Seller in respect of any one delivery shall not entitle the Buyer to repudiate the contract or any instalments remaining to be delivered thereunder.
- (d) If the Buyer fails to take delivery of the goods or fails to give the Seller adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Buyers reasonable control or by reason of the Sellers fault) then, without prejudice to any other right or remedy available to the Seller, the Seller may:

store the goods until actual delivery and charge the Buyer for the reasonable costs of storage (including insurance and any additional handling and transport costs) or sell the goods at the best price readily obtainable and (after deducting all such reasonable storage and selling expenses) account to the Buyer for the excess over the price under the contract or charge the Buyer for any shortfall below the price under the contract.

**REQUESTS FOR COPIES OF DELIVERY NOTES MUST BE MADE WITHIN 14 DAYS OF DATE OF INVOICE.
BREAKAGES AND SHORT DELIVERIES MUST BE REPORTED WITHIN THREE DAYS OF RECEIPT.
BREAKAGES RELATING TO FIREGLASS AND PROCESSED GLASS MUST BE REPORTED AT TIME OF DELIVERY.**

5. Title

- (a) The risk in the goods shall pass to the Buyer on delivery to him at the agreed place of delivery. If the provisions of the foregoing Clause 4(d) are operative, risk shall pass at the time when the goods are due and ready for delivery.
- (b) Notwithstanding delivery and the passing of risk in the goods, or any other provision of these Conditions, the property in the goods shall not pass to the Buyer until the Seller has received in cash or cleared funds, payment in full of the price of the goods and all other goods agreed to be sold by the Seller to the Buyer for which payment is then due.
- (c) Until such time as the property in the goods passes to the Buyer, the Buyer shall hold the goods as the Seller's fiduciary agent and bailee, and shall keep the goods separate from those of the Buyer and third parties and properly stored, protected and insured and identified as the Seller's property. Until that time the Buyer shall be entitled to resell or use the goods in the ordinary course of its business, but shall account to the Seller for the proceeds of sale or otherwise of the goods, whether tangible or intangible, including insurance proceeds, and shall keep all such proceeds separate from any monies or property of the Buyer and third parties and, in the case of tangible proceeds, properly stored, protected and insured.
- (d) Until such time as the property in the goods passes to the Buyer (and provided the goods are still in existence and have not been resold), the Seller shall be entitled at any time to require the Buyer to deliver up the goods to the Seller and, if the Buyer fails to do so forthwith, to enter upon any premises of the Buyer or any third party where the goods are stored and repossess the goods.
- (e) The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the goods which remain the property of the Seller, but if the Buyer does so all monies owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.

6. Transit

- (a) The Seller reserves the right to choose the form of transport for the goods and the composition of the consignment load.
- (b) If the Buyer establishes to the satisfaction of the Seller that the goods or any part thereof have been damaged in transit or vary from the type or size (other than the tolerances referred to in Clause 2(b)) or quantity to that ordered, the Seller will replace such goods or the relevant part thereof or credit the Buyer with the value thereof provided the Buyer shall have given the Seller written notification (otherwise than upon the carrier's delivery document) of such damage or variations within 3 days of delivery. The Seller shall be permitted a reasonable opportunity to inspect any consignment referred to in any written notification given by the Buyer pursuant to this Clause 6(b).
- (c) Except as provided in Clause 6(b) the Seller shall not be liable to the Buyer for any loss or damage arising out of or in connection with goods which are damaged and/or which vary in type and/or size and/or quantity from that ordered.
- (d) For the purpose of this Clause 6, transit shall be deemed to have been completed as soon as goods are ready to be unloaded at the place of delivery; and goods shall be deemed to be ready to be unloaded when all ropes, chains, sheets, restraining bars or other means of fastening have been removed. Unloading shall be the entire responsibility of the Buyer.
- (e) 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 so to do.

7. Distribution Equipment

Pallets, frames, stillages, end caps and all other distribution equipment are the property of the Seller and must be returned to the Seller on demand. Any deposit which has been charged thereon will only be credited to the Buyer if and when the Buyer returns the same to the Seller carriage paid and in good condition within a period of three months from the date of despatch.

8. Defective Goods

- (a) **GOODS REPRESENTED BY THE BUYER TO BE DEFECTIVE SHALL NOT FORM THE SUBJECT OF ANY CLAIM FOR INJURY, LOSS, DAMAGE OR ANY EXPENSE HOWSOEVER INCURRED WHETHER ARISING DIRECTLY OR INDIRECTLY FROM SUCH ALLEGED DEFECTS OTHER THAN DEATH OR PERSONAL INJURY RESULTING FROM THE SELLER'S NEGLIGENCE; BUT SUCH GOODS, IF RETURNED TO THE SELLER WITHIN 7 DAYS OF RECEIPT BY THE BUYER AND ACCEPTED BY THE SELLER AS DEFECTIVE, WILL AT THE DISCRETION OF THE SELLER, BE REPLACED FREE OF CHARGE OR CREDITED TO THE ACCOUNT OF THE BUYER.**
- (b) No condition is made or to be implied nor is any warranty given or to be implied as to the life or wear of the goods supplied or that they will be suitable for any particular purpose or for use under specific conditions, notwithstanding that such purpose or conditions may be known or made known to the Seller unless and except as any specific written warranty may be given by the Seller. Where such a specific written warranty is given its terms shall be incorporated into and shall form part of these conditions and shall for all purposes be construed as such.
- (c) No defect will be accepted other than those proven outside established Industry Standards.

9. Force Majeure

- (a) If the performance of the contract or any obligation thereunder is prevented by force majeure, the Seller shall be excused performance, provided that the Seller shall use reasonable endeavours to remove such cause(s) of non-performance, and shall continue performance thereunder without delay whenever such cause(s) are removed.
- (b) For the purpose of these Conditions, the term 'Force Majeure' includes acts of God, strikes, lock-outs, other industrial action, fire, accident, lightning, earthquakes, storms, floods, explosion, war and any other circumstances, whether similar or dissimilar, beyond the reasonable control of the Seller.

10. Termination

If the Buyer makes default in any payment, or commits any breach of the terms and conditions of the contract, or suffers distress or execution, or becomes insolvent, or commits an act of bankruptcy, or enters into any arrangement or composition with his creditors or goes or is put into liquidation (other than solely for amalgamation or re-construction), or if an administrative receiver or administrator is appointed over the whole or any part of the Buyer's business, or if a petition for an administration order is presented to the Court, or the Seller has any reasonable doubts as to the Buyer's insolvency, the Seller may, without prejudice to any rights which may have accrued or which may accrue to it, at its option; (i) require payment in advance for all or any further deliveries; or (ii) suspend any further deliveries until such default or breach, if capable of rectification, is rectified, or (iii) terminate the contract; and/or (iv) terminate any other contracts which the Buyer has placed with the Seller so far as any goods remain to be delivered thereunder.

11. Miscellaneous

- (a) In these Conditions "the Seller" means Triple Warm Sealed Units Limited and any of its associated companies as defined in S736 of Companies Act 1985.
- (b) No agent of the Seller has any authority to accept any order or make any contract binding on the Seller.
- (c) Any contract or order to which these Conditions relate is between the Seller and the Buyer as principals and is not assignable by the Buyer without the express written consent of the Seller.
- (d) Unless expressly agreed otherwise in writing, (i) any contract or order may be assigned by any of the Seller's associated companies and/or (ii) the Seller may manufacture the goods at any of its works or plants and/or (iii) the Seller may sub-contract the manufacture and/or supply of the goods.
- (e) The failure of the Buyer or the Seller to exercise any of its rights under these Conditions or the contract to which these Conditions relate shall not be deemed to have waived such parties rights.
- (f) The Seller reserves the right to supply equivalent products at its discretion.

12. Exports

- (a) The Buyer shall be responsible for complying with any legislation or regulations governing the importation of goods into the Country of destination and for the payment of duties thereon.
- (b) The Buyer shall be responsible for arranging inspection of the goods at the Seller's premises before shipment. The Seller shall have no liability for any claim in respect of any defect in the goods which would be apparent on inspection and which is made after shipment, or in respect of any damage during transit.

13. Governing Law

- (a) These Conditions of Sale and any contract arising hereunder shall in all respects be construed in accordance with English Law.
- (b) The parties agree to submit to the jurisdiction of the English Courts. The Seller will consider any requests made by the Buyer to settle any disputes through Arbitration or ADR.

14. General

The completion or termination of the contract shall not affect the continuing operation of Clauses 5, 7 and 13(a)