

MACKENZIE GLASS LIMITED – TERMS AND CONDITIONS

These terms and conditions together with the documents expressly referred to in it tell you information about us and the legal terms and conditions (**Terms**) on which we sell any of our products (**Products**) and deliver any installation services (**Services**) to you.

These Terms will apply to any contract between us for the sale of Products to you and delivery of any Services (**Contract**). Please read these Terms carefully and make sure that you understand them, before ordering any Products or Services. Please note that by ordering any of our Products or Services, you agree to be bound by these Terms and the other documents expressly referred to in it. You should keep a copy of these Terms for future reference.

We amend these Terms from time to time (as set out in clause 8). Every time you wish to order Products or Services, please check the latest edition of these Terms to ensure you understand the terms which will apply at the time of purchase.

1 Information about us

1.1 We are Mackenzie Glass Limited, a company registered in England and Wales under company number 10942433 and with our registered office at Old Mansion House, 9 Quay Street, Truro, Cornwall TR1 2HE Our VAT number is GB 279 4278 52.

1.2 We have one branch in Bristol.

2 How the contract is formed between you and us

2.1 Your order for the Products and Services (**Order**) constitutes an offer by you to purchase the Products and Services in accordance with these Terms and as set out in any quotation form. You are responsible for ensuring that the terms of the Order are complete and accurate.

2.2 We will confirm our acceptance to your Order by providing you with a written acceptance of the Order, at which point the Contract shall come into existence.

2.3 A quotation for the Products and Services by us shall not constitute an offer and we reserve the right to withdraw or revise any quote at any time prior to acceptance by us of an Order.

2.4 Any quotation shall only be valid for a period of 30 days from its date of issue, unless otherwise agreed in writing by us.

3 Our Products and Services

3.1 Any images of our Products provided to you are for illustrative purposes only. Although we have made every effort to display the colours and designs accurately, we cannot guarantee that the colours and designs accurately reflect the colour and designs of the Products. Your Products may vary slightly from those images.

3.2 The packaging of the Products may vary from that shown on images on our websites.

3.3 All of our Products are subject to availability. We will inform you as soon as possible if the Product you have ordered is not available and we will not process your total order in the event that a Product is not available.

3.4 We shall supply the Products and Services to you in accordance with the specification set out in your Order.

3.5 We shall use all reasonable endeavours to meet any performance dates specified in the Order, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.

3.6 We have the right to make any changes to the Products and Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Products and Services, and we shall notify you in any such event.

3.7 Any goods, including glass provided by you to us, is handled, stored and processed entirely at your own risk.

3.8 You are responsible for:

- (a) ensuring that the terms of the Order are complete and accurate, including any measurements and specifications;
- (b) co-operating with us in relation to all matters relating to the Products and Services;
- (c) providing us, our employees, agents, consultants and subcontractors, with access to your premises in order to carry out the Services;
- (d) providing us such information and materials as we may reasonably require in order to supply the Products and Services, and ensuring that such information is accurate in all material respects;
- (e) ensuring any goods supplied by you are suitable for the installation of the Product. If we are required to carry out the Services with goods not supplied by us, we are not responsible for any defects in such goods or any loss or damage arising therefrom;
- (f) preparing your premises for the supply of the Services;
- (g) providing us with sufficient electric power and all equipment and facilities required to enable us to carry out the Services in accordance with all applicable laws, statutes and regulations;
- (h) removing all furniture, fixtures and fittings etc which might hinder us in carrying out the Services; and
- (i) obtaining all necessary licences, permissions and consents which may be required before the date on which the Services are to be carried out.

3.9 Where Products are manufactured by us in accordance with your specification:

- (a) we shall do so within the industry tolerances as stated by the Glass and Glazing Federation; and
- (b) you shall indemnify us in respect of any liability incurred by us in

respect of any infringement or alleged infringement of any patent, design, copyright, trade mark or other intellectual property of any third party.

3.10 If Products are ordered to be supplied to a template provided by you and the template dimensions vary to those specified in associated correspondence, the order will be executed to the dimension of the template. All templates must always be of a rigid material (not glass) and safe to handle for all persons involved in the order process. Templates will not (unless expressly requested in writing) be returned to you.

3.11 If our performance of any of our obligations under this Contract is prevented or delayed by any act or omission by you or failure by you to perform any relevant obligation (**Default**):

(a) we shall without limiting our other rights or remedies have the right to suspend performance of the Services until you remedy the Default and will rely on the Default to relieve us from performance of any of our obligations to the extent that the Default prevents or delays us from performance of any of our obligations; and

(b) we shall not be liable for any costs or losses sustained or incurred by you arising directly or indirectly from our failure or delay to perform any of our obligations as set out in this clause 3.11.

4 If you are a consumer

4.1 If you are a consumer, you may only purchase Products or Services from us if you are at least 18 years old.

5 If you are a business customer

5.1 If you are not a consumer, you confirm that you have authority to bind any business on whose behalf you place an order to purchase our Products and Services.

5.2 These Terms and any document expressly referred to in them constitute the entire agreement between you and us and supersede and extinguish all previous agreements, promises, assurances, warranties, representations and understandings between us, whether written or oral.

5.3 You acknowledge that in entering into this Contract you do not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in these Terms or any document expressly referred to in them.

5.4 You and we agree that neither of us shall have any claim for innocent or negligent misrepresentation or negligent mis-statement based on any statement in this Contract.

6 Our liability if you are a business

6.1 Nothing in these Terms limits or excludes our liability for:

- (a) death or personal injury caused by our negligence;
 - (b) fraud or fraudulent misrepresentation;
 - (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession);
 - (d) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession); or
 - (e) defective products under the Consumer Protection Act 1987.
- 6.2 Subject to clause 7.1, we will under no circumstances whatever be liable to you, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract for:
- (a) any loss of profits, sales, business, or revenue;
 - (b) loss or corruption of data, information or software;
 - (c) loss of business opportunity;
 - (d) loss of anticipated savings;
 - (e) loss of goodwill; or
 - (f) any penalty clauses, indirect or consequential loss.

6.3 Subject to clause 7.1 and clause 7.2, our total liability to you in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed:

- (a) in the case of a contract for the sale of Products, the price of the specific Product the subject of the claim; and
- (b) in the case of a contract for the provision of Services, the price of the specific Services set out in the Contract.

6.4 Except as expressly stated in these Terms, we do not give any representation, warranty or undertaking in relation to the Products. Any representation, condition or warranty which might be implied or incorporated into these Terms by statute, common law or otherwise is excluded to the fullest extent permitted by law. In particular, we will not be responsible for ensuring that the Products are suitable for your purposes.

7 Our liability if you are a consumer

7.1 We only supply the Products for domestic and private use. You agree not to use the product for any commercial, business or re-sale purposes, and we have no liability to you for any loss of profit, loss of business, business interruption, or loss of business opportunity.

7.2 We do not in any way exclude or limit our liability for:

- (a) death or personal injury caused by our negligence;
- (b) fraud or fraudulent misrepresentation;
- (c) any breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession);
- (d) any breach of the terms implied by section 13 to 15 of the Sale of Goods Act 1979 (description, satisfactory quality, fitness for purpose and samples);

- (e) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession); or
- (f) defective products under the Consumer Protection Act 1987
- 8 Our right to vary these terms**
We may revise these Terms from time to time in the following circumstances:
- (a) changes in how we accept payment from you; and
- (b) changes in relevant laws and regulatory requirements. Every time you order Products and Services from us, the Terms in force at that time will apply to the Contract between you and us.
- 9 Your consumer right of return and refund**
- 9.1 If you are a consumer purchasing Products through over the telephone, you have a legal right to cancel a Contract under the Consumer Protection (Distance Selling) Regulations 2000 during the period set out below in clause 9.3. This means that during the relevant period if you change your mind or for any other reason you decide you do not want to keep a Product, you can notify us of your decision to cancel the Contract and receive a refund.
- 9.2 However, this cancellation right does not apply in the case of any made-to-measure or custom-made products.
- 9.3 Your legal right to cancel a Contract starts from the date of the Order Confirmation, which is when the Contract between us is formed. If the Products have already been delivered to you, you have a period of 14 (fourteen) working days in which you may cancel, starting from the day after the day you receive the Products. Working days means that Saturdays, Sundays or public holidays are not included in this period.
- 9.4 To cancel a Contract, please contact the branch. You may wish to keep a copy of your cancellation notification for your own records. If you send us your cancellation notice by e-mail, then your cancellation is effective from the date you sent us the e-mail. If you call us to notify us of your cancellation, then your cancellation is effective from the date you telephone us
- 9.5 You will receive a full refund of the price you paid for the Products and any applicable delivery charges you paid for. We will process the refund due to you as soon as possible and, in any case, within 30 calendar days of the day on which you gave us notice of cancellation as described in clause 9.5. If you returned the Products to us because they were faulty or mis-described, please see clause 9.6.
- 9.6 If you have returned the Products to us under this clause 9 because they are faulty or mis-described, we will refund the price of a defective Product in full, any applicable delivery charges, and any reasonable costs you incur in returning the item to us.
- 9.7 We will refund you on the credit card or debit card used by you to pay.
- 9.8 If the Products were delivered to you:
- (a) you must return the Products to us as soon as reasonably practicable;
- (b) unless the Products are faulty or not as described (in this case, see clause 9.6), you will be responsible for the cost of returning the Products to us;
- (c) you have a legal obligation to keep the Products in your possession and to take reasonable care of the Products while they are in your possession.
- 9.9 As a consumer, you will always have legal rights in relation to Products that are faulty or not as described. These legal rights are not affected by the returns policy in this clause 9 or these Terms.
- 10 Delivery and Collection**
- 10.1 We shall deliver the Products to the location set out in the Order or such other location as the parties may agree (**Delivery Location**).
- 10.2 You shall collect the Products from our premises or such other Delivery Location within seven business days of us notifying you that the Products are ready. We reserve the right not to deliver at the Delivery Location in the event no-one is available to sign for collection.
- 10.3 Your order will usually be delivered by our own transport or by a reputable courier. Please note a signature, printed name and the received date is required for all deliveries.
- 10.4 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. We reserve the right to deliver in instalments. We shall not be liable for any delay in delivery of the Products caused by an Event Outside Our Control or your failure to provide us with adequate delivery instructions.
- 10.5 Delivery will be completed when we deliver the Products to the Delivery Location or, if the Products are being collected, on collection of the Products at the Delivery Location.
- 10.6 On delivery of the Products to the Delivery Location you are responsible for unloading the Products.
- 10.7 If no one is available at the Delivery Location to take delivery, you will be contacted by our courier or us to arrange an alternative delivery date. We reserve the right to charge for alternative delivery arrangements.
- 10.8 If you fail to take or accept delivery of the Products within seven business days of us notifying you that the Products are ready then, except where such failure or delay is caused by an Event Outside Our Control or our failure to comply with its obligations under the Contract:
- (a) delivery of the Products shall be deemed to have been completed at 9.00 am on the seventh business day after the day on which we notified you that the Products were ready; and
- (b) we shall store the Products until delivery or collection has taken place, at your own risk and charge you for all related costs and expenses (including insurance).
- 10.9 The Products will be your responsibility from the completion of delivery.
- 10.10 Pallets, frames, stillages and all other delivery equipment are our property and must be returned to us on demand. Should you fail to return any delivery equipment within seven business days following such demand, a charge at the rate of £50 plus VAT per week for each item of delivery equipment retained thereafter will be incurred. Use of delivery equipment for any purpose other than carriage and storage of Products supplied by us is prohibited.
- 10.11 You own the Products once we have received payment in full, including all applicable delivery charges.
- 10.12 You shall not be entitled to reject any goods on the grounds that they have been delivered in incomplete quantities.
- 10.13 Unless specifically notified to us and agreed with us prior to our acceptance of your Order, we are entitled to assume that there are no special conditions to the order that you place with us.
- 11 International Orders**
- 11.1 We do not deliver to addresses outside the UK except for the Channel Islands.
- 12 Price of Products and Services and delivery charges**
- 12.1 The prices of the Products and Services will be as set out in the quotation from time to time. We take all reasonable care to ensure that the prices of Products and Services are correct at all times. However if we discover an error in the price of Product(s) and Services you ordered, clause 12.6 will apply.
- 12.2 Prices for our Products and Services may change from time to time, but changes will not affect any order which we have confirmed with you.
- 12.3 For all other purchases, prices are exclusive of charges and VAT. If the rate of VAT changes between the date of your order and the date of delivery, we will adjust the VAT you pay, unless you have already paid for the Products in full before the change in VAT takes effect.
- 12.4 In addition to the price of Products, an energy surcharge may be payable. The circumstances in which an energy surcharge is payable and the amount thereof can be obtained from us on request.
- 12.5 The price of a Product does not include delivery charges. Our delivery charges will be calculated at the time of order.
- 12.6 We sell a large number of Products and Services. It is always possible that, despite our reasonable efforts, some of the Products and Services may be incorrectly priced. If we discover an error in the price of the Products and Services you have ordered we will notify you in writing of this error and we will give you the option of continuing to purchase the Product and Services at the correct price or cancelling your order. We will not process your order until we have your instructions. If we are unable to contact you using the contact details you provided during the order process, we will treat the order as cancelled and notify you in writing. Please note that if the pricing error is obvious and unmistakable and could have reasonably been recognised by you as a mispricing, we do not have to provide the Products and Services to you at the incorrect price.
- 13 Payment**
- 13.1 We accept payment using most major credit cards and debit cards. We also accept cash (up to a limit of £2,000) and (subject to being cleared on first presentation) cheques.
- 13.2 Orders made by non-account holding customers to a value of less than £500 (**Minimum Value**), (or such Minimum Value as is set by us from time to time), will only be processed once payment has been received in full.
- 13.3 For sales to our non-account holding customers over the Minimum Value, we require a 50% deposit from you on confirmation of your order and we shall require from you payment of the balance upon delivery or collection of those Products and/or Services.
- 13.4 All credit cards and debit cards are subject to validation checks by the card issuer. If the issuer of your payment card refuses to authorise payment to us we will not process the order and we shall not be liable to you for failure to process the order.
- 13.5 All credit card payments made by account holding customers are subject to a 2% charge for business credit cards.
- 13.6 All invoices issued to our account holding customers are payable in full and cleared funds within 30 days of the date of the invoice. Payment shall be made to the bank account nominated by us. Time of payment is of the essence.
- 13.7 If you fail to make any payment due to us under the Contract by the due date for payment then you shall pay interest on the overdue amount of 2.5% above the Bank of England base rate (as such rate is amended from time to time). Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount. You shall pay interest together with the overdue amount.
- 13.8 In the event of a dispute between us, we shall be entitled to recover from you our reasonable costs and expenses (to include legal, postage and administrative costs) that have been reasonably incurred by us in such dispute.
- 14 Title and risk**
- 14.1 The risk in the Products shall pass to you on delivery or collection.
- 14.2 By accepting delivery, you warrant that the goods have been delivered completely and in accordance with the delivery documentation and in

- acceptable condition, unless otherwise notified in writing to us within 48 hours of delivery.
- 14.3 Title in the Products shall not pass to you until we have received full payment in cleared funds.
- 14.4 Until title to the Products has passed to you, you shall:
- store the Products separately from all other goods held by you so they remain identifiable as our property;
 - not remove, deface or obscure any identifying mark or packaging on or relating to the Products;
 - maintain the Products in satisfactory condition and keep them insured against all risks for their full price from the date of delivery; and
 - afford us a reasonable opportunity to inspect any damaged Product..
- 15 Events outside our control**
- 15.1 We will not be liable or responsible for any failure to perform, or delay in performance of, any of our obligations under a Contract as a result of an Event Outside Our Control. An Event Outside Our Control is defined in clause 15.2.
- 15.2 An **Event Outside Our Control** means any act or event beyond our reasonable control, including without limitation strikes, lock-outs or other industrial action by third parties, civil commotion, riot, invasion, terrorist attack or threat of terrorist attack, war (whether declared or not) or threat or preparation for war, fire, explosion, storm, flood, earthquake, subsidence, epidemic or other natural disaster, or failure of public or private telecommunications networks, the loss of power/utilities or impossibility of the use of railways, shipping, aircraft, motor transport or other means of public or private transport.
- 15.3 If an Event Outside Our Control takes place that affects the performance of our obligations under a Contract:
- we will contact you as soon as reasonably possible; and
 - our obligations under a Contract will be suspended and the time for performance of our obligations will be extended for the duration of the Event Outside Our Control. Where the Event Outside Our Control affects our delivery of Products to you, we will arrange a new delivery date with you after the Event Outside Our Control is over.
- 16 Communications between us**
- 16.1 When we refer, in these Terms, to "in writing", this will include e-mail.
- 16.2 If you wish to contact us in writing for any other reason than cancellation as set out in clause 9.5, you can send your communication to us by e-mail. You can always contact us using our Customer Services telephone line or by visiting the branch.
- 16.3 If we have to contact you or give you notice in writing, we will do so by e-mail or by pre-paid post to the address you provide to us in your order.
- 16.4 If you are a business:
- any notice or other communication given by you to us, or by us to you, under or in connection with the Contract shall be in writing and shall be delivered personally, sent by pre-paid first or second class post or other next working day delivery service, e-mail, or posted on our websites;
 - a notice or other communication shall be deemed to have been received: if delivered personally, when left at the relevant branch; if sent by pre-paid first class post or other next working day delivery service, at 10.00 am on the second business day after posting; if sent by pre-paid second class post, at 10.00 am on the third business day after posting; if sent by e-mail, one business day after transmission; or, if posted on our websites, immediately;
 - in proving the service of any notice, it will be sufficient to prove, in the case of a letter, that such letter was properly addressed, stamped and placed in the post and, in the case of an e-mail, that such e-mail was sent to the specified e-mail address of the addressee; and
 - the provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.
- 17 Other important terms**
- 17.1 We may transfer our rights and obligations under a Contract to another organisation, but this will not affect your rights or our obligations under these Terms.
- 17.2 You may only transfer your rights or your obligations under these Terms to another person if we have given prior written agreement.
- 17.3 No variation of the Contract shall be effective unless it is in writing and signed by a director of Mackenzie Glass Limited.
- 17.4 This contract is between you and us. No other person shall have any rights to enforce any of its terms, whether under the Contracts (Rights of Third Parties Act) 1999 or otherwise.
- 17.5 Each of the paragraphs of these Terms operates separately. If any court or relevant authority decides that any of them are unlawful or unenforceable, the remaining paragraphs will remain in full force and effect.
- 17.6 If we fail to insist that you perform any of your obligations under these Terms, or if we do not enforce our rights against you, or if we delay in doing so, that will not mean that we have waived our rights against you and will not mean that you do not have to comply with those obligations. If we do waive a default by you, we will only do so in writing, and that will not mean that we will automatically waive any later default by you.
- 17.7 If you are a consumer, these Terms are governed by English law. This means a Contract for the purchase of Products through our websites and any dispute or claim arising out of or in connection with it will be governed by English law. You and we both agree to that the courts of England and Wales will have non-exclusive jurisdiction.
- 17.8 If you are a business, a Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of England.
- 17.9 If you are a business, we both irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with a Contract or its subject matter or formation (including non-contractual disputes or claims).