

CONDITIONS OF SALE**1 APPLICATION**

These terms and conditions of sale (the "Conditions") shall, unless otherwise agreed in writing, apply to all sales of goods (the "Goods") supplied by Superglass Insulation Limited or any of its affiliates (the "Company") to the purchaser (the "Buyer").

2 BASIS OF CONTRACT

2.1 No order submitted by the Buyer shall be deemed to be accepted by the Company unless and until confirmed in writing by the Company's authorised representative (an "Order Confirmation"). The Order Confirmation and these Conditions form the contract between the Company and the Buyer for the sale and purchase of the Goods (a "Contract").

2.2 Quotations are open for acceptance for a period of 90 days from the date of the quotation and may be withdrawn or altered by the Company if the Buyer does not place any written order within such period. Once accepted the contract price will remain in place for a period of 180 days from first delivery.

2.3 The Buyer shall be responsible to the Company for ensuring the accuracy of:

- (a) the terms of any order submitted to the Company;
- (b) any necessary information provided to the Company relating to the Goods within sufficient time to enable the Company to perform the Contract in accordance with its terms; and
- (c) any applicable specification produced by the Company for the Buyer based on information provided by the Buyer.

2.4 No Contract may be cancelled, varied or suspended by the Buyer except with the prior written agreement of the Company and provided the Buyer shall indemnify the Company in full against all losses and costs incurred by the Company as a result of such cancellation, variation or suspension.

2.5 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. The Contract constitutes the entire agreement between the parties. The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in the Contract.

3 GOODS

3.1 The quantity, quality and description of [and any specification for] the Goods should be set out in the Order Confirmation and shall be subject always to these Conditions. The specification, description and functionality of the Goods are set out in our product data sheets.

3.2 The Company reserves the right to make any changes to the specification of the

Goods required to conform with any applicable laws or, where the Goods are to be supplied to the Company's specification, which do not materially affect their quality or performance.

4 GOVERNING LAW & JURISDICTION

The Contract and all disputes or claims arising out of or in connection with the Contract or its subject matter or formation shall be governed by English law and shall be subject to the exclusive jurisdictions of the Courts of England and Wales.

5 SEPARABILITY

Where an order for successive deliveries of Goods is accepted by the Company each delivery shall be treated as a separate Contract and disputes arising out of or in connection with one delivery shall not affect the balance of deliveries to be made in execution of the order.

6 TERMINATION AND SUSPENSION

6.1 Without limiting its other rights or remedies, the Company may terminate a Contract with immediate effect by giving written notice to the Buyer if;

- (a) the Buyer commits a material or persistent breach of the Contract or any earlier Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of receipt of notice in writing of the breach; or
- (b) the Buyer shall become bankrupt, go into liquidation or enter into any agreement or composition with its creditors, or being an incorporated company shall have a receiver or administrator appointed or pass a resolution to wind up or have an order of court made against it to such effect or it suspends or threatens to suspend, or ceases or threatens to cease to carry on, all or a substantial part of its business.

6.2 Without limiting its other rights or remedies, the Company may cancel any Contract and/or suspend further deliveries of the Goods if any of the events listed in Condition 6.1 occurs, or the Company reasonably believes that the Buyer is about to become subject to any of them, or if the Buyer fails to pay any amount due under any Contract on the due date for payment.

6.3 On termination of the Contract for any reason the Buyer shall immediately pay to the Company all of the Company's outstanding unpaid invoices and interest.

6.4 Termination shall not affect the accrued rights and remedies of the parties as at termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.

6.5 Clauses which expressly or by implication have effect after termination shall continue in full force and effect.

7 FORCE MAJEURE

7.1 The Contract may be deemed to be totally or partially suspended if the Company cannot perform its obligation under the Contract if such delay or failure results from events, circumstances or causes beyond its reasonable control.

7.2 If the period of delay or non-performance continues for 3 months, either party may terminate the Contract without liability to the other by giving 14 days' written notice to the other party.

8 TENDER OF DELIVERIES

8.1 If the Buyer shall fail to take or accept delivery of Goods when delivery falls due, without prejudice to any other rights conferred by law, the Company shall have the right to invoice the Buyer for the price of the Goods and store the Goods until actual delivery and charge the Buyer for reasonable costs, including but not limited to insurance, storage and re-delivery charges.

8.2 Without prejudice to Condition 8.1, if 10 working days after the due delivery date, the Buyer has not taken or accepted delivery of the Goods, the Company may resell or otherwise dispose of part of or all of the Goods.

9 LOSS OR DAMAGE OF GOODS IN TRANSIT

9.1 Where the Company has agreed to deliver the Goods, the Company shall be liable for loss or damage to the Goods which occurs before risk has passed to the Buyer but the Company's liability shall be limited to (a) crediting the Buyer with the invoice value of any Goods lost or damaged; or (b) to replacement of any Goods lost or damaged, whichever the Company shall consider the most appropriate.

9.2 The Buyer shall notify in writing both the Company and the appropriate independent haulier engaged by the Company of loss or damage upon Delivery of the Goods and of non-delivery within 2 hours of the due time for delivery.

10 WARRANTIES AND LIABILITIES

10.1 The Company warrants that, on Delivery, the Goods supplied shall correspond with their written specification (if any) and will be free from material defects in materials and workmanship provided that the Company shall be under no liability for any failure to comply with the warranty set out in this Condition 10.1 in any of the following events:

- (a) where the Goods have been manufactured to a design and specification stipulated by the Buyer;
- (b) the defect arises as a result of misuse, wilful damage, negligence, abnormal installation, storage or working conditions or fair wear and tear;
- (c) failure to follow the Company's instructions or good trade practice as to the storage, installation, fitting, use, testing and maintenance of the Goods; or

- (d) the Buyer alters or repairs the Goods without the written consent of the Company.
- 10.2 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and additional legal or contractual implied terms or warranties are, to the fullest extent permitted by law, excluded from the Contract.
- 11 REJECTION OF GOODS**
- 11.1 The Buyer shall, at its expense, inspect [and test] each shipment of the Goods delivered by the Company.
- 11.2 If the Goods fail to comply with the warranty at Condition 10.1, the Buyer shall inform the Company as soon as reasonably practicable after becoming aware of the same and in any event within 3 working days of Delivery of the Goods in relation to defects which are externally apparent (i.e. a defect in the Goods that can be discovered at first sight and without unpacking the Goods from the form in which they are delivered) and within 3 working days of discovery in relation to a hidden defect (except for Under-Recovery Defects (as defined below) which shall be subject to Condition 12 below).
- 11.3 The Company must be provided with a reasonable opportunity to inspect and/or test any Goods notified as defective in accordance with Condition 11.2. If the Company is satisfied that such Goods are defective, the Company shall, at its sole discretion, either (a) credit the Buyer with the invoice value of the defective Goods; or (b) replace the defective Goods free of charge to the Buyer, whichever the Company shall consider the most appropriate.
- 11.4 Except as provided in this Condition 11, the Company shall have no liability to the Buyer in respect of the Goods' failure to comply with the warranty set out in Condition 10.1 or for any defects.
- 12 UNDER-RECOVERY**
- 12.1 This Condition 12 sets out the Buyer's sole and exclusive remedy for claims arising from the Goods failing to recover fully the required thickness on removal from packaging (referred to as "**Under-Recovery Defects**"). The Buyer shall inform the Company of any Under-Recovery Defects as soon as reasonably practicable after becoming aware of the same and in any event within 45 working days of Delivery of the Goods.
- 12.2 The Company must be provided with a reasonable opportunity to inspect and/or test any Goods notified as having Under-Recovery Defects in accordance with Condition 12.1. If the Company is satisfied that such Goods are defective the Company shall either (a) credit the Buyer with the invoice value of the defective Goods; or (b) replace the defective Goods free of charge to the Buyer, whichever the Company shall consider the most appropriate.
- 12.3 Failure by the Buyer to give notice of Under-Recovery Defects in accordance with Condition 12.1 within 45 working days of Delivery of the Goods shall be deemed to be a waiver of all claims related to Under-Recovery Defects in respect of such Goods. The Company shall have no liability or responsibility for Under-Recovery Defects that are not notified to the Company within 45 working days of Delivery of the Goods.
- 13 PASSING OF PROPERTY AND RISK**
- 13.1 All Goods supplied shall be at the risk of the Buyer from the time of Delivery, however ownership of the Goods will not pass to the Buyer until the Company has received payment in full for all Goods supplied.
- 13.2 Until title in the Goods passes to the Buyer, the Buyer shall hold the Goods as the Company'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 Company's property.
- 13.3 Until title in the Goods passes to the Buyer (and provided the Goods are still in existence and have not been resold) the Company shall be entitled at any time to require the Buyer to deliver up the Goods to the Company 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.
- 13.4 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 Company, but if the Buyer does so all monies owing by the Buyer to the Company shall, without prejudice to any other right or remedy of the Company forthwith become due and payable.
- 14 DELIVERY**
- 14.1 The Company shall despatch the Goods to the delivery address stated in the Order Confirmation and delivery shall occur in accordance with either Condition 14.1 or 14.2 below ("**Delivery**").
- 14.2 Where the Buyer collects Goods from the Company's premises, delivery shall be deemed to have taken place when the Goods have been loaded on to the Buyer's transport.
- 14.3 Where the Company despatches Goods to the Buyer's premises or other destination stipulated by the Buyer, delivery shall be deemed to have taken place when the Goods arrive at the Buyer's premises or the other destination but prior to unloading.
- 14.4 Unless expressly agreed to the contrary in writing, the Company may at its discretion deliver the Goods by instalments in any sequence. Where the Goods are delivered by instalments each instalment shall be deemed to be a separate Contract. Default or failure by the Company in respect of one or more instalments shall not entitle the Buyer to cancel any other instalment.
- 14.5 The Customer shall not be entitled to reject the Goods if the Company delivers up to and including 5% more or less of the quantity of Goods ordered but a pro rata adjustment shall be made to the invoice on receipt of notice from the Buyer that the wrong quantity of Goods was delivered. The Company will not be liable for any further claim for loss or damage caused solely thereby.
- 14.6 It is the responsibility of the Buyer to ensure that adequate and appropriate facilities are made available to allow delivery to take place and to allow the Goods to be unloaded from the delivery vehicle. Where delivery cannot take place through no fault of the Company or its employees or agents, the Company will be entitled to levy a charge on the Buyer to cover all reasonable additional costs or losses that it incurs thereby, including the cost of further delivery arrangements.
- 15 TIME OF DELIVERY**
- 15.1 Any dates quoted for delivery are approximate only and the Company shall not be liable for any delay however caused. Goods may be delivered in advance of the quoted delivery date upon reasonable notice to the Buyer.
- 16 PRICE AND TERMS OF PAYMENT**
- 16.1 The price of Goods shall be the price set out in the Order Confirmation unless otherwise agreed between the parties in writing. Unless otherwise stated the price excludes the costs of packaging, insurance, delivery to the delivery address stated in the Order Confirmation, which shall be invoiced to the Customer.
- 16.2 The Company reserves the right to alter prices between the date of quotation and date of dispatch, the latter price will apply. However in that event, the Buyer may cancel the delivery and neither party shall have any claim for any loss or damage arising thereby.
- 16.3 Price is exclusive of any applicable value added tax ("VAT"). The Buyer shall, on receipt of a valid VAT invoice, pay to the Company such additional amounts in respect of VAT as are chargeable on the supply of the Goods.
- 16.4 The Company may invoice the Customer for the Goods on or at any time after the completion of delivery. Unless otherwise stated in the Order Confirmation, payment shall be made in full within 30 days of the date of the invoice for the Goods (the "**Due Date**") without any deduction, set-off or withholding except as required by law. A payment shall be considered to have been made when the full amount has been received by the Company. The time of payment of the price shall be of the essence of the Contract.
- 16.5 If the Buyer fails to make payment by the Due Date then, without prejudice to any other right or remedy available to the

Company, the Company shall be entitled to:

- (a) withhold or suspend any further deliveries of the Goods to the Buyer or cancel any Contract; and
- (b) charge the Buyer interest on the amount unpaid, at the rate of 4% per annum above Bank of England base rate from time to time. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment.

16.6 It any payment is dishonoured or countermanded by the Buyer, the Company shall be entitled to charge the Buyer an administration fee of £25 plus VAT for each such occasion, together with any additional Bank charges or other costs incurred thereby.

17 EXCLUSION OF CONSEQUENTIAL DIRECT AND NATURAL LOSS

17.1 Nothing in these Conditions shall limit or exclude the Company's liability for (i) death or personal injury caused by its negligence, (ii) fraud or fraudulent misrepresentation, (iii) breach of the terms implied by section 12 of the Sale of Goods Act 1979, (iv) defective products under the Consumer Protection Act 1987, or (v) any matter in respect of which it would be unlawful for the Company to exclude or restrict its liability.

17.2 Subject to Condition 17.1, the Company shall under no circumstances whatever be liable to the Buyer, whether in contract, tort, breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract. The Company's total liability to the Buyer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort, breach of statutory duty, or otherwise, shall in no circumstances exceed in respect of any claim or in the

aggregate the price of the Goods as invoiced to the Buyer.

18 CONFIDENTIALITY

18.1 The Buyer acknowledges that all information relating to the Company's business or that of any group company (including the fact of and the terms of any order and any technical information), which is not public knowledge, is confidential. The Buyer agrees not to disclose such confidential information to any other person, nor to use it for any other purpose than fulfilling an order.

18.2 The Buyer shall not use the name, trademarks, tradenames or the intellectual property rights of the Company nor refer to the business connection at any time (before, after or during fulfilment of any order) for advertising, promotional or other purposes without the prior written consent of the Company.

18.3 The Buyer agrees that any data in connection with its business relations with the Company (including personal data) may and will be stored and processed by the Company or by third parties employed by the Company

19 PROVISION OF SAMPLE GOODS

19.1 In no circumstances will the Company sell its Goods by sample and the supply of sample Goods to the Buyer or prospective buyers is not intended to provide them with a contractual specification of the Goods or to constitute a sale or offer of sale by sample.

20 VARIATION

20.1 Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is in writing and signed by an authorised representative of the Company.

21 CONSTRUCTION

21.1 The headings of conditions are for convenience only and shall not affect their interpretation.

22 GENERAL

22.1 Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.

22.2 If any of the Conditions or part thereof is or becomes invalid, the validity of the remaining provisions shall remain unaffected thereby. The parties shall substitute for the invalid provision a new provision which serves the economic purpose of the invalid provision to the furthest possible extent.

22.3 No delay or waiver by the Company in exercising its rights under or in connection with the Contract on one or more occasions shall be relied upon on subsequent occasions or shall limit or restrict the future exercise or enforceability of the Company rights in question.

22.4 The parties to this Contract do not intend any of its terms to be enforceable pursuant to the Contract (Rights of Third Parties) Act 1999 by any person who is not a party to this Contract.

22.5 The relationship of the Company and the Buyer is that of an independent contractor and does not constitute a partnership, agency or contract of employment and neither party will have the right to bind the other.

22.6 Any notice or demand to be given to either party hereunder shall be in writing and shall be given or sent by sending the same by registered post to such party's address as shown on the Order Confirmation or if no such address, the last known address.

22.7 The Buyer shall not be entitled to assign or otherwise transfer any of its rights or obligations under this Contract without the written consent of the Company, which shall not be unreasonably withheld.