

**1. Definitions**

"Seller" shall mean DDG GLASS PTE LTD, DDG GLASS MFG SDN BHD and their agents.  
"Buyer" shall mean the Company, Individual, Organization or Entity entering into this contract with the Seller.  
"Goods" shall mean the goods and/or services to be supplied by the Seller to the Buyer under this Contract.  
"Terms and Conditions" shall mean the terms and conditions defined in this document and any special terms agreed in writing between the Buyer and Seller.  
"Contract" shall mean the Seller's quotation as accepted by the Buyer and the terms and conditions herein contained.

**2. Conditions Applicable**

These Terms and Conditions shall prevail over any other terms and conditions including any terms and conditions which the Buyer may purport to apply under any purchase order, confirmation or order or any other document, and replaces and supersedes any prior or contemporaneous communications, representations, or agreements, whether oral or written, with respect to such subject matter.

**3. Prices**

- (a) The prices of the Goods are subject to Goods and Services Tax Act (Chapter 117A).
- (b) The rates and/or prices of Goods as stated in the Contract shall exclude foreign levies and/or taxes and any charges incurred as a result of the changes in legislation, regulations and building by-laws, and the like.
- (c) The prices of the Goods shall be subject to re-measurement based on the actual quantities of Goods supplied to the Buyer.

**4. Payment**

- (a) The Seller shall be entitled to serve a payment claim on the Buyer on or before the 7<sup>th</sup> day of each calendar month for the Goods supplied under the Contract. For the avoidance of doubt, the submission of invoice by the Seller to the Buyer shall be deemed to be the serving of a payment claim under this provision.
- (b) The Buyer shall respond to the payment claim by paying to the Seller the claimed amount upon the expiry of 7 days after the relevant payment claim is served on the Buyer.
- (c) Where the Buyer fails to pay the whole or any part of the claimed amount to the Seller, the Seller may suspend the supply of Goods under the Contract. During the period of suspension, the Seller is not liable to the Buyer for any loss or damage suffered by the Buyer, or by any person claiming through or under the Buyer.
- (d) If the Seller, in exercising the right to suspend the supply of Goods incurs any loss or expenses as a result of the termination or removal by the Buyer from the Contract of any part of the supply, the Buyer is liable to pay the Seller the amount of any such loss or expenses and any such loss or expenses may be recovered by the Seller as a debt due from the Buyer.
- (e) Interest at the rate of 1.5% per month shall be payable by the Buyer to the Seller for any part of the claimed amount which is not paid within 7 days after service of the payment claim on the Buyer, until the entire claimed amount is paid.

**5. Title and Property in the Goods**

- (a) Notwithstanding the delivery and passing of risk in the Goods, or any other provision of these Terms and Conditions, the property in the Goods shall not pass to the Buyer until the payment in respect of the Goods has been made.
- (b) 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.

- (c) 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.
- (d) 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. Delivery and Risk**

- (a) The Supplier shall deliver the Goods to such place and at such time as specified by the Buyer subject to clause 6 (d) below.
- (b) The Seller reserves the right to choose the form of transport for the Goods and the composition of the consignment load. The Seller's rates are inclusive of the Seller's standard packing. Any additional requirements will be chargeable over and above the quoted rates.
- (c) Any time specified for delivery by the Buyer is given as an estimate only and shall not constitute a contractual obligation. No loss or damage shall be attributed to any delivery that has not been affected by any such date.
- (d) No undertaking or commitment to any delivery schedule will be made by the Supplier without prior agreement and/or receipt of:
  - i. The Letter of Credit or similar payment facility and issuance thereof, and
  - ii. Confirmed irrevocable cutting list detailing full and complete requirements covered by item 6(d)i.
 The Supplier shall not be held liable to the Buyer for the delay in providing the undertaking or commitment to any delivery schedule if items 6(d)i and 6(d)ii above are not agreed nor provided for by the Buyer.
- (e) Where the Buyer fails or declines to take delivery of Goods on the date specified for delivery or if no date is specified when Goods are ready and available for delivery, then the Seller may give 7 days' notice to the Buyer upon expiration of which the Goods shall be deemed to have been dispatched and delivered and the Seller may additionally charge the Buyer for any reasonable storage or additional transport costs which result.
- (f) If the Goods are not accepted, delayed or cancelled and a re-delivery becomes necessary, this will incur a re-delivery charge or collection at the Buyer's expense.
- (g) If the Buyer considers that Goods have been damaged in transit or that the consignment of Goods is incorrect, the Buyer shall give to the Seller a written notice on the same day the Buyer received the Goods from the Seller, specifying and giving full particulars for such damaged Goods or incorrect Goods delivered. The Seller shall be permitted a reasonable opportunity to inspect any consignment and if appropriate (acting reasonably) will credit or replace such Goods, with any replacement being invoiced and the damaged Goods credited upon return if so requested by the Seller.
- (h) Where delivery is to be made by transport other than the Seller's own carrier, any failure of Goods to arrive within 14 days of receipt by the Buyer of the advice note must be reported to the Seller within the above period of 14 days failing which, the Seller shall have no liability for non-delivery.
- (i) Except as provided in Clause 6(f), the Seller shall have no liability to the Buyer and/or any other party arising out of or in connection with damage to, or incomplete, or incorrect consignments of Goods.

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- (j) When the Goods or any number of them (whether or not being in the actual quantity ordered) are either collected by the Buyer from the Seller's premises or are free of all vehicle transit restraints and ready for unloading by the Buyer at the agreed delivery address, delivery in relation to those Goods is complete and the risk in them shall pass to the Buyer.
- (k) 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. Any assistance given in respect of any unloading and any unloading carried out by the Seller or the Seller's agents (including the positioning of Goods on the Buyer's storage equipment) is entirely at the Buyer's own risk. The use of distribution equipment within or outside the Buyer's premises following unloading is at the Buyer's risk.
- (l) The signing of the delivery order shall mean the acceptance of the delivered Goods in good condition and in accordance with the Buyer's requirements.
- (m) Pallets, frames, stillages and all other distribution equipment are the Seller's property and must be returned to the Seller on demand in writing. Should the Buyer fail to return any distribution equipment within 7-days of such demand, a charge of MYR1,600/- for each item of distribution equipment retained thereafter will be invoiced to the Buyer, and recovered by the Seller as a debt due from the Buyer.
- (n) Use of said distribution equipment for any purpose other than carriage and storage of Goods supplied by the Seller is prohibited. The Buyer shall bear full responsibility for any damage caused to the Pallets, frames, stillages and other distribution equipment. The Buyer agrees to pay the Seller for such costs incurred by the Seller to repair or replace the damaged Pallets, frames, stillages and other distribution equipment.
- (o) The Buyer shall not be entitled to reject any Goods on the grounds that they have been delivered in incomplete quantities.

**7. Limited Warranty**

- (a) Seller shall provide a limited warranty for Goods supplied under the Contract. The Seller warrants to the Buyer that the Goods shall conform to appropriate product standards and tolerances published by the relevant international bodies. For details that are not covered or addressed by international standards, industry norms, guidelines or publications from recognized international bodies governing industry-wide practices form an appropriate reference.
- (b) The Seller's Standard Warranties, in the format current at the date of the relevant Contract, shall apply to the Seller's products.
- (c) Save as expressly provided by these Terms and Conditions, or as expressly provided in any specific written warranty issued by the Seller, or as otherwise specifically agreed in writing by the Seller, all Seller's representations and statements (whether express or implied) and all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- (d) Goods represented by the Buyer to be defective shall not, save as expressly provided for in these Terms and Conditions, or in any specific written warranty issued by the Seller, 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 demonstrated by the Buyer to be in breach of the Seller's warranties set out in clause 7(b) will, at the Seller's sole discretion, be replaced free of charge, with the replacement being invoiced and the original credited to the Buyer's account on return, if so requested by the Seller, but the Seller will have no further liability to the Buyer.

- (e) Except in respect of death or personal injury caused by the Seller's negligence, the Seller shall not be liable to the Buyer for any indirect, special or consequential loss or damages (whether for loss of profit or otherwise) which arise in connection with the supply of Goods or their use or resale by the Buyer.
- (f) Optical, dimensional, other physical properties and colour of the Goods are subject to the Seller's manufacturing specifications, tolerances and/or standards, details of which are available on request.
- (g) The Buyer shall be responsible for the correct specification, intended use and/or installation of the Goods in accordance with the relevant Standard Codes of Practice and Regulatory Authorities and indemnify the Seller in respect thereof. The Seller accepts no liability for loss or damage suffered by the Buyer resulting from failure to adhere to recommendations and guidelines from industry relevant bodies and authorities.
- (h) The Seller's warranties in clauses 7(a) and 7(b) are subject to the Seller receiving full payment for the Goods on or before the due date for payment. In the event that such payment is not received by such time, said warranties shall be null and void unless and except to the extent that the Seller, at the Seller's absolute discretion, may otherwise expressly permit in writing.

**8. Limitation of Liability**

Seller shall not be liable or responsible for any system or application design, either to Buyer or any third party. Under no circumstances shall Seller be liable to, or agree to indemnify Buyer or any third party for, any loss, costs, damage or expense resulting from Buyer's or any third party's acts, omissions or conduct. Buyer shall defend, indemnify and hold the Seller and its employees harmless from and against any and all loss, costs, damage, or expense resulting from any claim arising out of Buyer's failure to perform any contract obligations, or for the negligence, intentional acts or wilful misconduct of Buyer, its employees or representatives.

**9. Infringement on Patent and Other Rights**

The Buyer shall full indemnify the Seller against any action, claim or demand, cost and expense arising from, or incurred by reason of any infringement or alleged infringement or any other protected rights in respect of any Goods supplied by the Seller.

**10. Novation and Assignment**

- (a) The Buyer shall not novate the whole or any part of the Contract or the supply of the Goods to any other person without the written consent from the Seller.
- (b) The Buyer shall not assign the obligation to pay under the Contract without prior written consent from the Seller and any assignment made in contravention of this provision shall not bind the Seller.

**11. Force Majeure**

- (a) The Seller shall not be liable for delay due to force majeure, which include, but not limited to, acts of God, strikes, lock-outs, other industrial action, fire, accident, lightning, earthquakes, storms, floods, explosion, war and act of terrorism any other circumstances, whether similar or dissimilar, all of which beyond the Seller's control.
- (b) In the event of any delay due to force majeure, the Seller shall be entitled to an extension of time for delivery of the Goods equivalent to the period of time the Seller is actually delayed thereby in the performance of the supply as a whole.
- (c) If the Force Majeure event continues for a period of time that makes performance of the Contract impossible or impracticable, either Party may terminate this Contract upon thirty (30) days' written notice to the other Party.

**12. Termination**

The Seller may, without prejudice to other rights and remedies available to the Seller under general law, terminate the Contract by notice in writing on any one of the following grounds:-

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- (a) if the Buyer fails or refuses, after receipt of 7-days written notice given by the Seller, to pay the whole or any part of the claimed amount by the due date of payment of the relevant payment claim; and
- (b) if the Buyer assigns to another person or permits vicarious performance by another person of its principal functions, or if the Buyer assigns the right to pay monies due under the Contract without the Seller's consent;

Without prejudice to the foregoing provisions of this Contract, the Contract shall be automatically terminated if the Buyer becomes bankrupt or insolvent or makes a composition with creditors or if, being a company, any winding-up order of any kind is made, or if a receiver or manager of the Buyer's undertaking or assets is appointed, or possession taken or execution levied by the creditors or debenture holders or under a floating charge, or if a judicial manager is appointed.

Upon the termination of the Contract, the Seller shall be entitled to damages on the same basis as if the Buyer had wrongfully repudiated the Contract, including loss of profit as a consequence of the termination of this Contract on any parts of undelivered Goods.

**13. Miscellaneous**

- (a) Goods ordered to a template will be executed to the dimensions of the template regardless of the dimensions specified in any associated documents or correspondence. Templates must be made of a rigid material; paper, cardboard and similar materials will not be accepted.
- (b) Where Buyer drawings are supplied, the Seller will undertake processing as per drawings confirmed in the Order Confirmation. Drawings must be based on "Outside View". The Seller will not be responsible or liable for any discrepancies and/or deficiencies in the details of drawings provided by the Buyer.
- (c) For shaped Goods, raw material costs will also include the rectangular size containing the shape.
- (d) Any dimensions supplied by the Buyer to the Seller in fractions of millimetres will be rounded to the nearest millimetre. Where the supplied dimensions are in the Imperial system of units, they will be converted to millimetres and then rounded. Final sizes will be reflected in the Order Confirmation and all production will be undertaken as per the Seller's confirmed dimensions in millimetres.
- (e) Detailing for holes, cut-outs and notches are subject to review and acceptance by the Seller. These will be undertaken as per the specifications and guidelines stipulated in the relevant international standards. Any exceptions will require acceptance in writing by the Seller and, in such cases, the Seller will provide the same on a "best effort" basis without liability for any direct or indirect consequences arising therefrom.
- (f) Maximum and minimum sizes per process are available on the Seller's web site and sizes outside these ranges may only be processed upon written agreement from the Seller.
- (g) Unless stated otherwise by the Seller, glass edgeworks are quoted as follows and extra charges will apply for any additional requirements:
  - i. Annealed glass – clean cut edges.
  - ii. Heat treated glass 10 mm thick or less – seamed edges.
  - iii. Heat treated glass greater than 10mm thick – flat ground edges or water-jet machine cut.
- (h) Handling, storage or processing of Buyer supplied Goods by the Seller, will be undertaken entirely at the Buyer's risk.
- (i) All Goods incorporating a "SEFAR<sup>®</sup>" mesh are supplied with the mesh trimmed back 10mm from the edges, as standard. The Buyer is advised to take this into consideration for the aesthetics in the proposed installation. Samples may be requested for a clear understanding of this detail.
- (j) The Seller accepts no responsibility for thermal assessment of the Goods. The onus is on the Buyer to ensure the Goods are safe for their intended application.

- (k) All heat-treated (Heat Strengthened or Fully Tempered) Goods will be processed with "roller-wave" parallel to the width as specified in the Buyer's order and subject to a maximum width of 3210mm.
  - i. Items with width greater than 3210mm will not have the "roller-wave" parallel to the width.
  - ii. Shaped Goods must unambiguously identify which dimension is the width.
  - iii. Failure to specify the width will result in the Goods being processed in the most efficient orientation available.
- (l) All trade stamps, permanent identifying marks or other labels are generally applied per the Seller's standard positioning for the relevant product. Variations in this position are not a manufacturing fault and do not constitute grounds for rejection of the Goods or replacement under warranty.
- (m) For Insulated Glass Units (IGUs), unless agreed and stated otherwise in writing, quoted rates include:
  - i. "Flush" edges all around; no steps or offsets.
  - ii. Nominal secondary seal depth of 6.5mm.
  - iii. Black coloured standard primary and secondary seals.
  - iv. Mill finish (silver) aluminium spacer.
 Any variations to these standards must be agreed in writing (in English) by the Seller, will be charged accordingly and may have a longer lead time.
- (n) All insulated glass and laminated Goods incorporating sputtered Low-Emissivity (Low-E) coatings are supplied with the coating "edge-deleted" along the periphery. The width of edge-deletion is such that the coating is fully encapsulated inside the Goods and thereby protected from atmospheric corrosion of the coating. The Buyer is advised to be aware of this in the aesthetics of the proposed installation.
- (o) For sputter-coated (Offline-Coated/Soft-Coated) Goods, there can be a slight difference in colour between annealed and heat-treated versions. This is inevitable in certain coatings and should be taken into account prior to placing an order. Such differences, if any, will not automatically constitute a valid reason for the Seller to accept replacement claims for "colour variation". The Buyer is advised to undertake a visual assessment of full-size mock-ups based on the relevant specification prior to finalizing the order.
- (p) The Seller's liabilities are limited to the Goods supplied by the Seller and only cover the Seller's direct client. The Seller shall not be held liable for any subsequent processing undertaken by the Buyer on the Goods or by a third party that directly or indirectly alters the Goods in any respect.
- (q) Information and illustrations in the Seller's printed literature are approximate representations not binding in detail. The Seller reserves the right to change specifications and other information in its literature and the Buyer must satisfy itself that the current stocks of Goods are as depicted in any literature.
- (r) Unless expressly agreed otherwise in writing:
  - i. Any Contract or order may be assigned by the Seller to 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.
- (s) Where Goods are manufactured and/or processed by the Seller in accordance with the Buyer's specification, the Buyer shall indemnify the Seller in respect of any liability incurred by the Seller in respect of any infringement or alleged infringement of any patent, design, copyright, trademark, or other intellectual property of any third party.
- (t) In cases where the Goods ordered are contrary to the recommendations of the Seller and this has been communicated in writing to the Buyer, the Seller will undertake to supply the Goods "AS IS". The Seller will not be responsible or liable for any direct or indirect consequences arising from the supply of such Goods.

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**14. Governing Law**

(a) The law governing this Contract shall be the law of Malaysia.

**15. Severability**

If any provision of this Contract is held to be invalid, illegal or unenforceable for any reason, such provision shall be severed and the remaining provisions of the Contract shall continue in full force and effect.

**16. Waiver**

The failure by the Seller to exercise any right or remedy shall not constitute a waiver of that right or remedy.

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