

Wadds Limited
Terms and Conditions of Sale

1. **GENERAL**

- 1.1. The "Company" referred to in the following Conditions means Wadds Limited (Company No: SC350084).
"The Buyer" means the person firm or company contracting with the Company.
- 1.2 All quotations are made and orders are accepted subject to the following Conditions. Any such quotations may be made or orders may be accepted by the Company in writing (including fax or e-mail) or verbally. All other Conditions contained in any order or otherwise from the Buyer are excluded from the contract or any variation thereof unless expressly accepted by the Company in writing. If these Conditions are clearly displayed at the reception area of the Company's premises and the Buyer enters such reception area to make an order over the counter the Buyer will be deemed to have knowledge of and accepted the Company's Conditions.
- 1.3 In these Conditions "goods" shall mean materials, whether supplied or supplied and installed or any part thereof including crates, pallets, stillages and other packing materials and any articles which the Buyer agrees to buy from the Company.
- 1.4 No contract is deemed to come into existence unless or until the Buyers order to supply the materials specified in a quotation is accepted by the Company and this is without prejudice to the Company's whole rights at common law in the event of the Company seeking to claim that a contract has come into existence without written acceptance.

2. **VALIDITY**

All quotations are valid for a period of sixty days from the date therein subject to any fluctuations as referred to in Condition 4.2 hereunder and unless expressly stated to be valid for a shorter or longer period and if longer thereafter will be subject to confirmation before acceptance of order.

3. **TERMS OF PAYMENT**

- 3.1 Payment of the price and any Value Added Tax in respect of goods supplied are due for payment by the Buyer no later than **THIRTY DAYS** (or such earlier period as may be specified by the Company) after the time of delivery (although at all times and notwithstanding the foregoing the Company reserves the right to demand immediate payment prior to supply of the goods or services or to call for payments by instalments comprising interim progress payments and a final payment in accordance with schedules previously agreed with the Buyer).
- 3.2 Time for payment shall be of the essence of the contract and the Company shall be entitled to charge interest on all overdue accounts at the rate of four per centum above the base lending rate of the Bank of Scotland from time to time being in force calculated from the due date of payment on a daily basis until the payment therefore has been made in full.
- 3.3. No dispute arising as to the quality of the goods or defects or omissions shall entitle the buyer to delay payment unless the Company shall agree liability thereon in an agreed sum or shall have been found liable by a Court of competent jurisdiction.

4. **PRICES**

- 4.1 All prices are exclusive of Value Added Tax unless otherwise stated.
- 4.2 All prices quoted for goods are subject to fluctuation in the cost of labour, materials, transport, overheads, currency exchange rates, taxation, government orders and regulations whether new or

existing or other like factors out with the Company's reasonable control and any increase in such costs after the date of quotation and up to the date of delivery will be added to the contract price.

- 4.3 The Company reserves the right to make an additional charge in respect of variations requested by the Buyer to the terms and specifications of the goods ordered and if these are to be delivered out with normal working hours or out with a forty mile radius of Glasgow.
- 4.4. If the Company agrees expressly with the Buyer, any goods returned to stock shall be subject to a minimum handling charge of 15% over the invoice value plus any carriage or other costs incurred which will be deducted from the amount to be credited.
- 4.5 All stillages shall at all times, remain the property of the Company notwithstanding delivery to the Buyer and if retained by the Buyer after failure to return the stillages following 48 hours prior notice to the Buyer by the Company and/or damaged due to the fault or negligence of the Buyer, the Company shall be entitled to charge the Buyer the full cost to the Company of the stillages so retained or damaged in which case any reference in these Conditions to goods or goods agreed to be sold to the Buyer or purchased from the Company shall be deemed to include any such stillages. Further, in this Condition references to the Buyer shall be deemed to include the Buyer's employees, sub-contractors, agents or anyone entering the Buyer's premises.

5. **RISK AND TITLE**

- 5.1 Risk shall pass to the Buyer when the goods or any part thereof leave the Company's premises for delivery to the Buyer (whether or not they are delivered by the Company or uplifted by the Buyer).
- 5.2 Notwithstanding delivery and the passing of risk in the goods or any other provision of these conditions the property and the goods shall not pass to the Buyer until the Company has received in cash or cleared funds payment in full of the price (plus VAT) of the goods and all other goods or items agreed to be sold by the Company to the Buyer in respect of which the Buyer is indebted to the Company whether or not payment is then due as a result of any period of credit having been agreed. Until such time as the

property and the goods passes to the Buyer, 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, the Company shall be entitled to enter upon the premises of the buyer or any third party where the goods are stored and to repossess the goods.

- 5.3 The Buyer shall not be at liberty to sell the goods purchased from the Company prior to the passing of title to the goods. If the Buyer does sell the goods then the Buyer will hold on trust for the Company so much of the proceeds of sale received by the Company under contracts which include any of the goods sold either in their original or altered state as necessary to discharge payment in full to the Company.
- 5.4 If the Buyer fails to hold any sums in trust following a sale of the goods, or is deemed not to have held the same in trust, the Buyer shall within 7 days of written notice by the Company to the Buyer assign to the Company all rights against the person or persons to whom the Buyer has supplied the goods and if the Buyer shall have failed to assign such rights or is unable to do so within said period of 7 days by the Buyer's acceptance hereof, following receipt of such 7 day notice, the Buyer shall be deemed to have assigned any such rights to the Company.
- 5.5 The Company shall remain entitled to full recovery of any sums outstanding in respect of the goods notwithstanding that the Company retains ownership of them.

6. **DELIVERY AND DELAY**

- 6.1 Delivery of the goods shall be made by the Buyer collecting the goods from the Company's premises. If some other place for delivery is agreed by the Company, delivery shall be made by the Company delivering the goods to the nearest point to the road which is suitable in the opinion of the Company's driver. The Buyer will always ensure that an authorised person accepts the goods on behalf of the Buyer if delivered to the Buyer, failing which the Company shall be entitled not to deliver the goods and return to the Company's premises and charge the Buyer for the expense of such failed delivery. The unloading of goods without

undue delay is the responsibility of the Buyer unless offloading by crane lorry has been contracted for.

- 6.2 Time for delivery and performance is given in good faith as accurately as possible but is not to be of the essence of the contract. The Buyer shall have no right to damages or to impose penalties or to cancel their order for delay from any cause unless agreed by the Company in writing.
- 6.3 If some other place for delivery is agreed by the Company, the Company will endeavour to comply with reasonable requests by the Buyer for postponement of delivery but shall be under no obligation to do so. Where delivery is postponed otherwise than due to default by the Company, the Buyer shall pay all costs and expenses including a reasonable charge for storage and transportation occasioned thereby and the Company shall be entitled to invoice the goods in accordance with these conditions.
- 6.4 If deliveries are required over a period extending over 14 days each consignment shall be considered as a separate transaction and the Company is entitled to invoice each separately.

7. **DAMAGE IN TRANSIT, NON RECEIPT AND RETURNED GOODS**

- 7.1 Notice of any claim arising out of or in connection with this contract must be given in writing to the Company within twenty four hours from the time when the goods are collected or delivered, failing which all claims (other than claims arising out of or in connection with defects not discoverable upon reasonable examination of the goods) shall be deemed to be waived and the Buyer shall have no claims whatsoever in respect thereof. The Buyer shall be deemed to have examined all goods and materials upon delivery or uplift and if there are any defects or damage to the goods at the point of delivery this must be reported at the point of delivery and the delivery note endorsed accordingly. Where defects are properly intimated to and accepted by the Company, the Company shall not under any circumstances have any responsibility other than to repair the defect (if this can be done) or to supply replacement goods. The Company will not accept rejection of glass products due to imperfections inherent in the manufacturing process of glass, including the coloured interference hands occasionally seen in float glass; these are purely an optical phenomena. In the case of handcrafted glass design work, including

etching, leading, coloured film and bevels etc., the nature of this work and the materials involved necessarily produce minor optical and finish detail variations, together with limited tooling/handling surface marking which are deemed inevitable and acceptable "imperfections" when commissioning this type of design work. If the defective goods have been fitted, the Company shall have no liability whatsoever for the costs of or any costs associated with fitting goods or removing goods already fitted.

7.2 The Company shall not be liable for claims in respect of shortage or damage in transit or for deviation, mis-delivery, delay or detention, unless the Company and the carrier is notified in writing within three days of delivery or in the case of non-delivery, notice in writing is given in respect thereof within fourteen days of the date of notice of dispatch of the goods from the Company. In the absence of written notice the goods will be deemed to have been received in the correct quantity and free of defects which would have been apparent on inspection.

8. **LIABILITY**

8.1 The Company confirms that delivery of the goods will correspond with their specification and/or description as set out in the Acknowledgment of Order and that they will comply with any warranty printed by the Company current at the date of order and relating to the goods.

8.2 The above is subject to the following:-

8.2.1 The Company shall be under no liability in respect of any defect in the Goods arising from any drawing, design, or specification supplied by the Buyer.

8.2.2 The Company shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, failure to follow the Company's instructions (whether oral or in writing) misuse or alteration or repair of the Goods without the Company's approval.

8.2.3 The Company shall be under no liability under the above warranty (or other warranty condition or guarantee) if the total price of the Goods has not been paid by the due date for payment.

- 8.2.4 The above warranty does not extend to parts, materials or equipment not manufactured by the Company in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as given by the manufacturer to the Company.
- 8.2.5 The Company shall be under no liability for any striations or minor blemishes in the course of manufacture, particularly where coated glass is concerned.
- 8.2.6 The Company does not warrant that the goods will eliminate or control condensation.
- 8.3 The Goods are sold subject to the Company's quality standards and manufacturing tolerances a copy of which will be supplied to the Buyer on request. In particular bent toughened glass (as is normal within the trade) will have tong marks along one of the curved edges when toughening is carried out in the vertical plane. The number of marks and their position from the edge will vary depending on the glass thickness and the size of the panel. The bending process will also require some tolerances on all dimensions. These tolerances may vary dependent upon the shape of the curve, glass thickness and size of panel.
- 8.4 Subject as expressly provided in these Conditions all warranties conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- 8.5 Save where the Company has shown to have failed to exercise the standard of care which they are required to exercise as a matter of law, the Company shall not be liable in any circumstances in respect of the death or personal injury and under no circumstances whatsoever shall the Company be liable for consequential loss, loss of profits or damage to property.
- 8.6 In no circumstances whatsoever shall the Company's liability (in contract delict or otherwise) to the Buyer arising out of or in connection with the contract or the goods supplied hereunder exceed the invoice price of

the particular goods concerned. Any liability for loss or damage or delay howsoever arising caused by circumstances out with the Company's control is excluded.

- 8.7 Where the Buyer has been shown a brochure, catalogue, trade literature, advertising material or a sample of goods, the same are intended to indicate only the general character of the goods and the Company does not warrant that the goods shall correspond in any way with the goods so displayed or provided by way of sample. Any such brochures, catalogues, trade literature, advertising material or similar material shall not form part of any contract between the Buyer the Company.
- 8.8 In the event that any terms are expressed or implied with regard to the quality of the goods supplied by the Company and in the event that the Company is deemed to have breached such warranties, the Buyer shall not be entitled to terminate the contract to purchase the goods, the Company's liability being limited to the supply of alternative goods of the quality which the Company is deemed to have warranted and the Buyer shall be obliged to pay for such goods in terms of these Conditions of Contract.
- 8.9 In the event that the Buyer is unable to return the goods in the event of any claim relating to such goods, without prejudice to any other provisions of these Conditions the Buyer shall be under an obligation at all times to minimise any losses which they suffer as a result of any third party claim against the Buyer and shall be obliged to give the Company every opportunity (whether or not the Company admits liability) to and the Company shall have the option to remedy any defects caused as a result of any admitted defect in the goods supplied or to supply satisfactory goods. In the event that the Buyer fails to accept the remedy of such defects or accept such substitute goods where the Company admits such liability, the Buyer shall be deemed to have waived any claims against the Company in respect thereof and the Company shall have no liability in respect of any loss or damage arising from the initial delivery of the defective goods or from the delay before the defective goods are repaired or the substitute goods delivered.

- 8.10 If to the extent that any person by whom the Company has been supplied with the goods supplied hereunder (hereinafter referred to as "the Supplier") validly excludes, restricts or limits its liability to the Company in respect of said goods or any loss or damage arising from any liability of the Company to the Buyer in connection with the said goods, then the liability of the Company to the Buyer in respect of said goods shall be correspondingly excluded restricted or limited to the extent to which the Supplier is liable to the Company in respect of the Company's liability to the Buyer and no further. Any term, warranty or condition expressly implied or statutory to the contrary insofar as can be excluded, is excluded. The Company will upon request supply the Buyer with any details of any such exclusion, restriction or limitation by the Supplier.
9. **FORCE MAJEURE**
- 9.1 The Company shall be under no liability for any delay, loss or damaged caused wholly or in part by an Act of God, governmental restriction, condition or control or by reason of any act done or not done pursuant to a trade dispute whether such dispute involved the Company, Company's servants or not by reason of any other act, matter or thing beyond the reasonable control of the Company and without prejudice to the foregoing generality the Company will not be responsible for any delays in deliveries or suspension of deliveries caused by strikes, lock outs, war, fire, breakdown of plant and machinery or any other cause beyond its control.
10. **LAW AND JURISDICTION**
- The Contract shall be governed and construed in all respects in accordance with the laws of Scotland and shall, unless the Company otherwise determines, be subject only to the jurisdiction of the Scottish Courts.
11. **RIGHT OF SET OFF (AND COUNTER CLAIMS)**

No right of set off shall exist in respect of any claims by the Buyer against the Company and the Buyer shall not withhold all or any part of any payment which has become due to the Company for work done by any reason whatsoever.

12. **ASSIGNATION BY THE BUYER**

The Buyer shall not make any composition or arrangement with or assignation for the benefit of its creditors in respect of the goods without the Company agreeing in writing beforehand.

13. **TERMINATION**

The Company shall be entitled to terminate the Contract by written notice to the Buyer in the event that:-

13.1 The Buyer commits any material breach of any of the provisions of this contract and the case of a breach which is capable of remedy fails to remedy it within twenty one days of receipt of the written notice requiring it to be remedied or,

13.2 The Buyer being an individual or firm becomes apparently insolvent or is sequestrated or being a Company enters into liquidation whether voluntary or compulsory (save from amalgamation or the re-construction of a solvent Company) or has a Receiver appointed Administration Order made in relation to it entered into an arrangement or composition for the benefit of its creditors or ceases or threatens to cease to carry on business or suffers any diligence to be levied on its goods.

14. **GENERAL**

14.1 Waiver by the Company of any breach of the Contract by the Buyer shall not be considered as a waiver of any such subsequent breach of the same or any other provisions.

14.2 Any provision of these conditions is held by a competent authority to be invalid or unenforceable in whole or in part the validity of the provisions of these Conditions and the remainder of the provision in question shall not be affected thereby.

- 14.3 Any typographical, clerical or other error or omission in any sales literature, quotation price list, acceptance of offer, invoices or other document or information issued by the Company shall be subject to correction without any liability on the part of the Company.
- 14.4 The Company's employees or sub-contractors are not authorised to make any representations concerning the goods unless confirmed by the Company in writing. In entering into the Contract the Buyer acknowledges that it does not rely on and waives any claims for breach of any representations which are not so confirmed.
- 14.5 *Any reference to these Conditions to the provisions of any statutes shall be construed as a reference to that provision as a reference to that provision as amended, re-enacted or extended at the relevant time.*