

# Conditions of Sale.

## 1. Definition of Parties:

- a. In these conditions of sale “the company” and “we” and “us” and “ours” all refer to Duralyte Limited trading as Lyten.
- b. The terms “you” and “yours” refer to the customer of Duralyte Ltd. t/a Lyten.

## 2. Nature of contract:

- a. Unless expressly agreed in writing by us these Conditions of Sale apply to all sales or agreements to sell our supplies of goods, whether gratuitous or otherwise, made by us or our subsidiary or associated companies in the course of trade. In the event of any inconsistency or conflict between these conditions and the terms and/or conditions of the order placed by the customer these conditions shall prevail.
- b. For the avoidance of doubt it is confirmed that none of our employees, servants or agents have authority to agree to any oral variation, qualification or addition to these Conditions of Sale and only written variations which have been signed by one of our Directors will be regarded as binding.
- c. The Contract, these Conditions of Sale and any special or additional additions agreed by us will be governed by the law of Scotland and both parties prorogate and agree to accept the jurisdiction of the courts of Scotland without prejudice to our right to invoke any competent jurisdiction elsewhere at our sole discretion.
- d. Duralyte Ltd. t/a Lyten prices do not cover any service apart from manufacturing and therefore exclude any obligation to:
  - i. Apply for any required local authority or title consents.
  - ii. Check that the goods comply with any legal requirements relating to the property to which you intend to fit the goods.
  - iii. Visit, survey or assess the suitability of the property.
  - iv. Check that your measurements of the goods and the relevant parts of the property are correct.
  - v. Fit the goods to the property.
- e. Placement of an order will be deemed as acceptance of these conditions by the customer.

## 3. Your undertaking:

- a. You represent and undertake to us that all Duralyte Ltd. t/a Lyten goods will be fitted in a proper, workmanlike manner by properly qualified trades people in accordance with all legal requirements, good building practice and any instructions or guidance issued by us.
- b. You will therefore free, relieve, indemnify, hold harmless and pay to Duralyte Ltd. t/a Lyten all losses, damages, costs and expense of whatever nature, whether direct or indirect or consequential (“Liabilities”), civil or criminal, to the extent the liabilities arise from the representation and undertaking in Condition 3a being inaccurate or untrue.
- c. The taking of site sizes is your responsibility. We shall provide advice, but this in no way absolves you of responsibility for supplying accurate measurements. Advice is offered free, but abortive time incurred will be charged plus expenses.
- d. It is your responsibility to ensure that all goods ordered comply with any legal requirements relating to the property, including, but not limited to, cleaning, ventilation, fire escapes, safety glass and security. You will also ensure that all goods ordered are used in the manner proscribed for the domestic market.

## 4. Prices:

- a. Prices are quoted exclusive of:
  - i. Delivery or storage charges.

- ii. VAT, payable at the rate applicable on the later of when the payment is made or delivery or collection takes place.
  - iii. Costs of any performance testing requested by you.
- b. The company shall be entitled to correct arithmetical and factual errors or inaccuracies in any of the contract documents or in any pre-contract proposal, quotation, order or other representation.
- c. Prices quoted may be SUBJECT TO ALTERATION without notice in the event of a change in specification or of an increase in raw material or labour costs. Therefore we expressly reserve the right to increase prices to compensate for any rise in costs which may come into force between the date we accept your order and the delivery date.

#### 5. Payment:

- a. Duralyte Ltd. t/a Lyten, at our sole and absolute discretion, may require a partial deposit or full payment to be paid before the commencement of manufacture.
- b. If an agreement has been made for payment by instalments, payment of any instalment on the due date is a condition precedent to future performance by us and we reserve the right to suspend work on, or cancel, your order if any instalment is not paid on the agreed date.
- c. Whether or not an agreement has been made for payment by instalments, Duralyte Ltd. t/a Lyten always reserve the right, at their sole and absolute discretion, to invoice and require payment in full at any time prior to delivery (which right shall include the right to require payment in full before manufacturing of the goods is commenced and the right, without incurring any liability of any sort, to suspend work on, or cancel, your order if any such payment is required but not paid).
- d. We may withdraw our quotation and/or withhold delivery of goods if any account is outstanding by you to an extent which we (at our sole discretion) regard to be unreasonable.
- e. Unless specifically stated in writing to the contrary, the balance of the price (if any) including any additional charges incurred shall be paid to the company on delivery of the goods to the customer, or within 7 days of our advice that your goods are ready, whichever is the earlier. Duralyte Ltd. t/a Lyten, at our sole and absolute discretion, may require either cleared funds or payment by credit card before delivery or collection.
- f. In addition to charging interest at the then current statutory rate for commercial debts, failure to make any payment on any due date shall entitle us to require payment for the whole price and to withdraw any discount previously given by us in any pre-contract proposal, quotation, order, representation or in the contract itself. Any legal or collection costs incurred will also be payable in full.

#### 6. Delivery:

- a. Any delivery date quoted by us is given in good faith but must be regarded as approximate only and we cannot accept responsibility for any loss arising from a delay. We do not operate a specific time slot delivery system so will not accept liability for not making a specific time of delivery.
- b. Where no delivery date is specified at time of order the goods will be deemed to be required asap and will be invoiced accordingly.
- c. In no circumstances will liability be accepted by us for any delay, loss, cost or damage caused by:
  - i. Late, wrong, short or damaged delivery of goods by our suppliers or carriers.
  - ii. Shortage or lack of goods, labour or materials due to act of God, war, riot or civil commotion, strike, lockout or other industrial action, fire, flood, drought or any other cause whether or not of a similar kind which are beyond our control.
  - iii. Dealing with amendments made to your order at your request.
- d. The company will, at their sole and absolute discretion, deliver the goods to a Scottish mainland destination of the customer's choice as agreed when the order is placed. The company may make a charge for such delivery.
- e. Changes to the delivery location after placing the order may incur an additional delivery charge.

- f. Our delivery is to kerb side only; it is your responsibility to have the necessary labour or other arrangements to take the goods from the kerb side to wherever they are to be stored.
- g. Where our representative, employee or agent deems it unsafe or impractical to deliver, the delivery will be aborted and a redelivery fee charged to the customer.
- h. We may deliver in part deliveries.
- i. Each part delivery will be a separate and independent entity. The remainder of the contract cannot be cancelled if we are late or fail to deliver any part.
- j. If you do not collect or accept delivery of the goods with 7 days of being advised that your goods are ready, a storage charge of 1% of the price of the goods + VAT will be payable for each day thereafter.
- k. You will inspect the goods on delivery and be deemed to have accepted that the goods are of satisfactory quality, free of obvious defects and conform to contract and that the quantity of the goods is correct unless you notify us in writing to the contrary within two working days after delivery. Any such notice must give reasonable specification of the nature and extent of any obvious defect, damage or short fall failing which we shall be entitled to ignore the notice and treat the goods as having been accepted as conforming to contract in all respects. You shall be responsible for all claims for demurrage.
- l. In the case of a latent defect not obvious at delivery and which is to be the subject of a guarantee or other claims by you, it shall be an essential condition precedent to such claims being met that you notify us in writing within fourteen days of first becoming aware of the latent defect. Any such notice must give reasonable specification of the nature and extent of the latent defect failing which we shall be entitled to ignore the notice and treat it as having not been given.

#### 7. Passing of risk:

- a. Notwithstanding Condition 8 of these Conditions of Sale risk or loss or damage to the goods passes to you on delivery. We will not accept any claim for damage or loss of goods due to unloading or storage. If goods are collected from our premises risk passes to you when the goods are loaded on your or your carrier's vehicle.

#### 8. Retention of title:

- a. Until you have paid us the full purchase price of the goods which are subject of this contract and all other interest and charges payable under these Conditions of Sale and all other sums due to us in respect of any other goods supplied by us to you under any other contract.
  - i. The ownership of the goods shall not pass to you.
  - ii. You shall hold the goods only as an agent for us and will store the goods at no cost to us so that they are clearly identified as belonging to us.
  - iii. You shall not remove the goods or allow them to be removed from the address to which they are delivered and shall keep the goods in good condition and properly insured and shall not allow them to become the subject of any charge of lien whether by operation of law or otherwise.
  - iv. You may sell the goods in the ordinary course of your business (but not otherwise) to a Bona Fide purchaser and the proceeds of such sale or your claim for such proceeds shall be held by you as our agent until full payment to us has been made and our property in the goods that have been resold shall be transferred from the goods to the proceeds of such resale or the claim for such proceeds and shall attach thereto until payment of all sums due to us as foresaid has been received. Further, in the event of such resale, if you are unable for any reason to immediately remit the proceeds of such resale to us then you will arrange for those proceeds to be credited to a separate bank account opened by you as our agent until payment of the said proceeds is paid in full to us; if requested so to do you will execute a formal assignation in our favour of all claims you may have against the sub-purchaser.
  - v. You will assist us to minimise any losses including, but not limited to, brokering the sale of the goods to the sub-purchaser.

- vi. We reserve the right at any time to terminate your power of sale by notice to you if you are in default for longer than seven days in the payment of any sum whatsoever due to us for whatsoever reason or if we (at our sole discretion) have doubts as to your solvency.
- vii. Your power of sale shall automatically terminate if you become apparently insolvent as defined in Section 7(1) of the Bankruptcy (Scotland) Act 1985 or the subject of liquidation, bankruptcy or other insolvency procedures or a receiver or administrator is appointed over any of your assets or you make any arrangement or composition with creditors.
- viii. If the power of Sale is so terminated you shall immediately make the goods available for collection by us and you hereby authorise us to enter any premises occupied or owned by you for the purpose of recovering the goods.

9. Technical data/Representations:

- a. All sizes are quoted in metric measurement. Imperial sizes will be converted to nearest metric equivalent.
- b. Prices quoted apply to flat rectangles. Non-standard shapes will be priced on application. The company accepts no responsibility for inherent weaknesses due to the shape of non-rectangular panels, be they sealed units or individual panes of glass.
- c. Descriptions, weights, dimensions, colours, prices, illustrations etc., in our sales literature or in any correspondence preceding this contract or on our website are solely for information and do not make or imply any warranty.
- d. Our agents and employees are not authorised to make any representations as to the quality, or fitness for any particular purpose, of any goods. If any representation made, or opinion expressed, by any such agent or employee is a material matter you shall ensure that it is confirmed in writing at the time that the Contract between us is entered into, failing which we can accept no liability therefore.

10. Defects:

- a. Manufacture warranty is one year and is not transferable.
- b. There is a 10 year extruder's warranty on PVCu material.
- c. No claim will be considered without proof of origin and date of supply being submitted with claim.
- d. We cannot accept responsibility for faulty material where it has been fitted, fixed, painted or in any way altered, nor can such goods be accepted back or replaced by us. Liability shall be limited to REPLACEMENT OF DEFECTIVE MATERIAL and we shall in no circumstances whatsoever be liable, in contract or otherwise, for any loss, damage, expense or injury of any kind whatsoever whether consequential, direct, indirect or otherwise – however caused and whether arising out of or in connection with the installation, use or failure of the goods or any components comprised therein and whether or not due to our act or omission or that of our agents, employees or contractors. In the event our liability shall be restricted to the invoice value of the particular goods concerned.
- e. When you claim that the goods do not conform to your specification you must allow us the opportunity to inspect and test the goods.
- f. We will decide what remedial work is necessary. No claim will be considered for work carried out by other parties without our prior approval.
- g. Glazing work by others should conform to BS6262. No claim will be considered for damage to the goods when this requirement has not been met.
- h. If our installation and operation instructions, when issued, are not followed, we will not accept claims for damage and reserve the right to charge for remedial works.
- i. Where attachments are supplied for site fixing they are securely enclosed. Any deficiency should be notified to us in writing within 3 days of receipt.
- j. No claim will be considered unless you have complied with all of the conditions of the Contract between us.
- k. Except in the case of consumer sales the above provisions shall be accepted in substitution for and to the entire exclusion of all conditions and warranties whatsoever expressed or implied by Statute or Common Law or otherwise.

- l. The warranty does not extend to the cost or provision of specialized equipment, to any structural work including the removal and replacement of frames nor to any repair work or damage consequential to reglazing.
- m. If it is found after investigation that any defect is the result of circumstances outwith our control, including but not limited to problems caused by faulty installation, we reserve the right to charge for the investigation, any remedial work required and any expenses incurred.
- n. The customer will not be entitled to reject any material because of imperfection or variations in the glass making process or natural phenomenon, including but not limited to Brewster Fringes. All claims for glass products must meet the standards of the GGF approved professional check before being considered.
- o. The company service area is mainland Scotland only; remedial calls will not be made to the Islands. Customers not on the Scottish mainland are subject to supply only replacement terms.
- p. Contra charges ARE NOT ACCEPTED unless previously agreed in writing by a director of ours and formally invoiced. If such charges are not agreed you shall have no right to set off other claims against, or withhold, payment of sums due in terms of our invoice. Any money withheld by you under such circumstances will be subject to compound interest at the statutory rate for commercial debts.

#### 11. Orders:

- a. Contracts must be in writing and signed by an authorised signatory.
- b. It is the customer's responsibility to scrutinise orders, whosoever draws the Contract out, to ensure the requirement has been interpreted correctly as alteration is impossible after commencement of manufacture.
- c. Alterations or cancellations can only be accepted if:
  - i. notified in writing, signed by an authorised signatory, and acknowledged as received by the Production Manager of Duralyte Ltd. t/a Lyten; and
  - ii. they can be effected without loss to the company, but if work has commenced or orders placed with suppliers the customer will be liable.
- d. The company reserves the right to alter the contract price when making alterations at the customer's request.
- e. Except where otherwise agreed in writing you shall be liable for the full price of all goods sold or agreed to be sold by us notwithstanding cancellation by you of such sale or agreement to sell or supply. Return of materials manufactured to your instruction will not be accepted.
- f. Should the urgency of an order necessitate it, an additional charge may be made and will be notified to the customer at time of acceptance of the order.
- g. All contracts will be subject to an individual credit assessment prior to manufacturing. Delays may be experienced where outstanding debts remain unpaid.

#### 12. Terminating Contract / Services:

- a. Duralyte Ltd. t/a Lyten may terminate the Contract with immediate effect by giving you a notice of termination if any of the following events occur:
  - i. The company, in its sole and absolute discretion, decides that continuing the contract might harm the brand or otherwise adversely affect the reputation and goodwill of Duralyte Ltd. t/a Lyten or any of its partners or associated companies.
  - ii. The company, in its sole and absolute discretion, decides that you are, or may be, unable to pay your debts as they fall due.
  - iii. Any payment due by you under this or any other contract between you and the company is not paid on the date required by us.
  - iv. You breach this or any other contract with Duralyte Ltd. t/a Lyten and, at the sole and absolute discretion of the company, the breach is not capable of being remedied either at all or in a manner which we find acceptable.

- v. We have served a notice advising you of a breach of contract on your part and requiring same to be remedied to our satisfaction within such period as we, at our sole and absolute discretion, direct and, at the expiry of that notice, the breach has not been so remedied.
  - vi. The company becomes aware that any information given by you was misleading and, at the sole and absolute discretion of the company, has led to us entering the contract on terms, including those relating to price, which is prejudicial to Duralyte Ltd. t/a Lyten.
  - vii. You purport to terminate or cancel the contract except pursuant to a mutually agreed termination in writing.
- b. In the case of termination under any of these provisions we shall be entitled to recover all losses, costs, damages and expenses directly or indirectly incurred or to be incurred as a result of the termination including, but not limited to, any consequential losses, loss of profit, cancellation charges, sums due in respect of suppliers, labour, rescheduling of manufacturing, scrapping of components and part-finished goods, storage charges, disposal charges and legal, accountancy and diligence charges with all interest at the statutory rate for commercial debts.

### 13. General:

- a. Our goods are subject to patent rights, registered design rights and copyright. Any infringement of these rights will render the perpetrator liable to legal action. You expressly indemnify us against any claim whatsoever in respect of liability for any infringement or alleged infringement of patent rights or other industrial or intellectual property rights resulting from our compliance with your express or implied instructions or stipulations.
- b. If any condition of these Conditions of Sale is held by a competent authority to be invalid or unenforceable in whole or part, the remaining conditions will remain valid and continue in full force.
- c. References to the singular shall, where the context requires, include the plural.
- d. The headings of these Conditions of Sale are inserted for convenience only and shall not affect or limit the interpretation of any provision.
- e. Words following the word "including" are illustrative and non-exhaustive examples only and shall not limit the interpretation of the word preceding "including".
- f. Nothing in these Conditions of Sale is intended to or shall exclude or restrict any liability that we may have by virtue of the Consumer Protection Act 1987. In the event that any claim under the said act shall be made against us in respect of goods supplied by us you shall:
  - i. Fully indemnify us against all costs, loss or damages and expense suffered or incurred by us in respect of any claim by third parties (which shall include your employees) which indemnity shall apply to any lawful claim made under the Consumer Protection Act 1987 and shall continue for a period equivalent to the maximum period during which a lawful claim can be made under the Act or any subsequent, consolidating or amending legislation.
  - ii. Provide us with all available records and documentation which is required to assist in identifying the destination of any goods supplied to you by us.