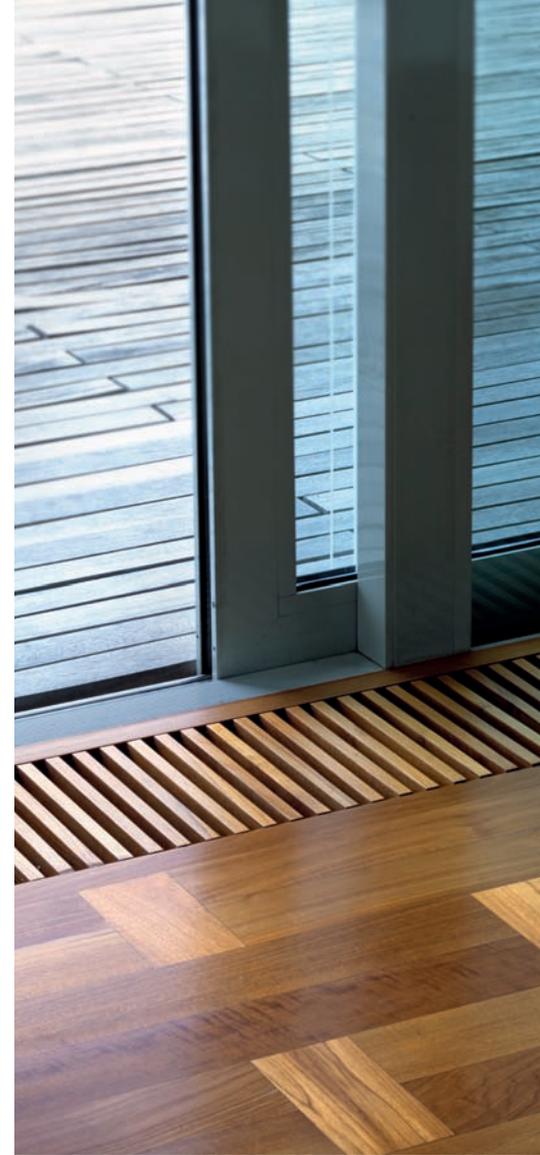




Acoustic

PGP 

Performance Glass Processing Ltd



Fire

PGP 

Performance Glass Processing Ltd

Insulation

PGP 

Performance Glass Processing Ltd

t e r m s   a n d   c o n d i t i o n s

PGP 

Performance Glass Processing Ltd

[www.PerformanceGlass.co.uk](http://www.PerformanceGlass.co.uk)

Company Reg 07546716 | VAT Reg 108 7319 15

# terms and conditions

## 1. Interpretation in these Conditions

“Buyer” means the person who accepts a quotation of the Seller for the sale of the Goods or provision of the Services, or whose order for the Goods or the Services is accepted by the Seller

“Conditions” means the terms and conditions of sale set out in this document which (unless the context otherwise requires) includes any special terms and conditions incorporated in a quotation or agreed in writing between the Buyer and the Seller.

“Contract” means the contract for the purchase and sale of the Goods and/or the provision of the Services.

“Goods” means any goods which the Seller is to supply under the Contract in accordance with these Conditions.

“Seller” means Performance Glass Processing Limited (Company Reg. No. 07546716).

“Services” means the installation of the Goods, or any part of them, or any other service to be provided by the Seller under the Contract in accordance with these Conditions.

“Writing” includes facsimile transmission, electronic mail and all comparable means of communication.

## 2. Basis of the Sale

**2.1** The Seller shall sell and the Buyer shall purchase the Goods and/or the Services in accordance with these Conditions, which shall govern the Contract to the exclusion of any other terms and conditions, subject to which, any quotation is accepted or purported to be accepted, or any order is made, or purported to be made by the Buyer.

**2.2** No variation to these Conditions shall be binding unless agreed in Writing between the authorised representatives of the Buyer and the Seller.

**2.3** Any typographical, clerical or other error or omission in any document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.

## 3. Orders and Specifications

**3.1** No order submitted by the Buyer shall be deemed to be accepted by the Seller unless and until confirmed in Writing by the Seller's authorised representative.

**3.2** The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Buyer, and for giving the Seller any necessary information relating to the Goods and/or the Services within a sufficient time to enable the Seller to perform the Contract in accordance with its terms.

**3.3** The quantity, quality and description of, and any specification for the Goods, and any specification for the provision of the Services, shall be those set out in the Seller's quotation (if accepted by the Buyer) or the Buyer's order (if accepted by the Seller).

**3.4** If the Goods are to be manufactured, or any process is to be applied to the Goods by the Seller in accordance with a specification submitted by the Buyer the Buyer shall indemnify the Seller against all loss, damages, costs and expenses awarded against or incurred by the Seller in connection with, or paid, or agreed to be paid by the Seller in settlement of any claim for

infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person which results from the Seller's use of the Buyer's specification.

**3.5** The copyright and all other intellectual property rights and confidential information in any drawings or specification produced by the Seller will remain vested in and the absolute property of the Seller.

**3.6** No order which has been accepted by the Seller may be cancelled by the Buyer, except with the agreement in Writing of the Seller. Following such agreement in Writing by the Seller, the Seller will detail to the Buyer the total of all reasonable value accrued from the date of the order to the date of cancellation, along with any additions, and calculated at the agreed rates as included within the contract. Such total is to be paid by the Buyer to the seller in accordance with Clause 5.

**3.7** The Seller shall allow in the provision of any Services for installation tolerances in accordance with the British Standard tolerances in existence from time to time.

**3.8** Glass will be of merchantable quality, complying with all appropriate British standards for manufacture. When assessing visual quality, Glass & Glazing Federation Section 4.10 shall prevail.

## 4. Price of the Goods and the Services

**4.1** The price of the Goods and/or the Services shall be the Seller's quoted price. Where single item prices are quoted as part of a project quotation, they are only singly applicable if the whole project is ordered. All prices quoted are valid for 30 days only or until earlier amendment or withdrawal of the quotation by the Seller or acceptance by the Buyer.

**4.2** The Seller reserves the right, by giving notice to the Buyer at any time before delivery of the Goods or the provision of Services, to increase the price of the Goods and/or the Services to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the Seller, any change in delivery or provision dates, quantities or specifications for the Goods which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions, or in the case of the provision of Services, adequate access to the installation site.

**4.3** All prices quoted for the provision of Services are calculated on the basis of normal working hours from Monday to Friday inclusive.

**4.4** Carriage will be charged by the Seller to the Buyer on all consignments of Goods. Any premium or special delivery requested by the Buyer and agreed by the Seller will be charged to the Buyer in addition to the above.

**4.5** All prices quoted by the Seller exclude the cost of testing and the providing of samples which shall be charged to the Buyer in addition to the price.

**4.6** Where the Contract provides for a bond, the format of such bond will be subject to the approval of the Seller's bankers, and any fees or charges incurred by the Seller in obtaining and maintaining the bond are not included in the price and shall be charged to the Buyer in addition to the price inclusive of a 30% administration fee. ‘On Demand’ bonds will not be accepted under any circumstances.

**4.7** A set of ‘AS BUILT DRAWINGS’ will be issued electronically in PDF format upon request following delivery of the Goods and / or the provision of the Services. Further printed copies will be deemed chargeable.

**4.8** Unless otherwise stated, the price is exclusive of any applicable value added tax, which the Buyer shall be additionally liable to pay to the Seller.

## 5. Terms of Payment

**5.1** The Seller shall be entitled to invoice the Buyer for the price of the Goods and/or the Services on or at any time after the provision of the Services or delivery of the Goods or where Goods and/or Services are provided or supplied as part on an ongoing contract, on a monthly basis for the value of the Goods and/or Services supplied up to that point, unless, in the case of the Goods, they are to be collected by the Buyer or the Buyer wrongfully fails to take delivery of the Goods, in which event the Seller shall be entitled to invoice the Buyer for the price at any time after the Seller has notified the Buyer that the Goods are ready for collection or (as the case may be) the Seller has tendered delivery of the Goods.

**5.2** Where the Contract provides for a retention, unless otherwise agreed in Writing between the parties, the retention shall amount to 3% of the contract price with half released to the Seller on completion of the Contract and the balance released within 12 months of practical completion of the Contract. No delay in third party schedules or approvals shall be accepted.

**5.3** Subject to Clause 5.2, the Buyer shall pay the price of the Goods and/or the Services (less any discount to which the Buyer is entitled, but without any other deduction) within 30 days of the date of the Seller's invoice, and, in the case of the Goods, the Seller shall be entitled to recover the price, notwithstanding that delivery of the Goods may not have taken place and the property in the Goods has not passed to the Buyer. The time of payment of the price shall be the essence of the Contract.

**5.4** If the Buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to cancel the Contract or suspend any further deliveries to the Buyer, appropriate any payment made by the Buyer to such of the Goods (or the goods supplied under any other contract between the Buyer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer) and charge the Buyer interest on the amount unpaid at the rate of 8% per annum above the base rate from time to time of the Bank of England until payment in full is made.

## 6. Delivery

**6.1** Delivery of the Goods shall be made by the Seller delivering the Goods to the Buyer's premises, or if some other place for delivery is requested by the Buyer, by the Seller delivering the Goods to that place.

**6.2** Any dates quoted for delivery of the Goods and/or provision of the Services are approximate only, and the Seller shall not be liable for any delay in delivery of the Goods or provision of the Services howsoever caused. Time for delivery of the Goods or provision of the Services shall not be of the essence of the Contract unless previously agreed by the Seller in Writing.

**6.3** If the Seller fails to deliver the Goods (or any instalment) or provide the Services for any reason other than any cause beyond the Seller's reasonable control or the Buyer's fault, and the Seller is accordingly liable to the Buyer, the Seller's liability shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar goods or services to replace those not delivered or provided over the price of the Goods or the Services.

**6.4** The Buyer shall arrange for a suitable representative of the Buyer to be available upon delivery of the Goods or completion of the provision of the Services to confirm acceptance of the Goods and/or Services. Should a representative of the Buyer be unavailable at the time, the Goods and/or Services shall be deemed to be accepted and no claims for damage to the Goods howsoever caused shall be made against the Seller in this respect.

## 7. Risk and Property

**7.1** Risk of damage to or loss of the Goods shall pass to the Buyer:

- 7.1.1** in the case of Goods to be delivered at the Buyer's premises or at some other place other than the Seller's premises, at the time of delivery or if the Buyer wrongfully fails to take delivery of the Goods, the time when the Seller has tendered delivery of the Goods;
- 7.1.2** in the case of Goods to be delivered at the Seller's premises, at the time when the Seller notifies the Buyer that the Goods are available for collection.

**7.2** Notwithstanding delivery and the passing of risk in the Goods or any other provision of these Conditions, the property in the Goods shall not pass to the Buyer until the Seller has received in cash or cleared funds, payment in full of the price of the Goods and the Services and all other goods agreed to be sold and services provided by the Seller to the Buyer for which payment is then due.

**7.3** 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, but the Buyer shall be entitled to resell or use the Goods in the ordinary course of its business.

**7.4** 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. The Seller shall be entitled to a further payment in respect of the administration and recovery of the Goods, payable in accordance with Clause 5.

**7.5** 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.

## 8. Warranties and Liability

**8.1** To the extent permitted by law, we expressly exclude any conditions, warranties, and other terms which might otherwise be implied by statute, common law, or the law of equity.

**8.2** The Seller shall have and be under no liability in respect of the following:

- 8.2.1** any defect in the Goods and/or the Services arising from any drawing, design or specification supplied or approved by the Buyer;
- 8.2.2** any defect arising from fair wear and tear, wilful damage, impact damage, premature removal of tape protection, negligence, abnormal working conditions, failure to follow the Seller's instructions (whether oral or in Writing) misuse or alteration or repair of the Goods without the Seller's approval;
- 8.2.3** if the total price for the Goods and/or the Services has not been paid by the due date for payment;
- 8.2.4** any goods, parts, materials or equipment not manufactured by the Seller or processes or services not provided by the Seller.

**8.3** The goods and services are warranted against faulty materials and workmanship for a period of 12 months from the date of order placement and liability therein is subject to proof of regular maintenance in accordance with the Seller's Operation and Maintenance Instructions, such instructions are specific to the Contract and are available upon request.

**8.4** Any claim by the Buyer which is based on any defect in the quality or condition of the Goods or defect in the quality of Services provided, or their failure to correspond with specification, shall (in the case of Goods, whether or not delivery is refused by the Buyer) be notified to the Seller within 5 days from the date of delivery of the Goods or provision of the Services, enclosing full documentary proof. If delivery of the Goods is not refused and/or the provision of the Services is accepted by the Buyer and the Buyer does not notify the Seller of any defect as provided above, the Buyer shall not be entitled to reject the Goods and the Seller shall have no liability for such defect or failure, and the Buyer shall be bound to pay the price as if the Goods had been delivered and/or Services provided in accordance with the Contract.

**8.5** Where any valid claim in respect of any of the Goods which is based on any defect in the quality or condition of the Goods or quality of the provision of the Services, or their failure to meet specification is notified to the Seller in accordance with these Conditions, the Seller shall be entitled to replace the Goods (or the part in question) free of charge or, at the Seller's sole discretion, refund to the Buyer the price of the Goods (or a proportionate part of the price) or remedy any default in the provision of the Services free of charge, but the Seller shall have no further liability to the Buyer.

**8.6** Except in respect of death or personal injury caused by the Seller's negligence, the Seller shall not be liable to the Buyer by reason of any representation (unless fraudulent) or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for any indirect, special or consequential loss or damage (whether for loss of profit or otherwise) costs, expenses or other claims for compensation whatsoever (whether caused by the negligence of the Seller, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods or their use or resale by the Buyer or the provision of the Services, and the entire liability of the Seller under or in connection with the Contract shall not exceed the price of the Goods and/or the Services.

8.7 The Seller shall not be liable to the Buyer or be deemed to be in breach of The Contract by reason of any delay in performing, or any failure to perform any of the Seller's obligations in relation to the Goods and/or the Services if the delay or failure was due to any act of God, war, strikes, governmental regulations or orders, national emergencies, lock-outs, fire, flood, drought, site delays, inclement weather, relevant events as detailed in Standard form of Sub-Contract for Domestic Sub-contractors 1980 edition including all amendments clause 11.10, delay in the supply of information by the Buyer or any other cause beyond the Seller's reasonable control.

8.8 Subject to the provisions of this Clause 8, the Seller shall not be liable to the Buyer for any loss or damage arising directly out of the acts of the Seller's employees, agents or sub-contractors at the installation site or in any way whatsoever in relation to any special risks or perils present at the installation site which the Seller was not advised of prior to the provision of Services.

8.9 Subject to the provisions of this Clause 8, where the Contract provides for liquidated damages, the rate of liquidated damages shall at all times be proportional to the Contract price, but shall not in any event in aggregate exceed 5% of the Contract price.

8.10 The Seller has and will maintain at all times insurance cover in respect of Employers Liability, Public and Product Liability.

## 9. Responsibilities of Buyer

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9.1 Where the Contract provides for the provision of Services, the Buyer will provide the Seller with adequate access to the installation site and whilst at the installation site, ensure the safety of all employees, agents or sub-contractors of the Seller and if required by the Seller and at the expense of the Buyer provide heat, power (110v 15amps) water, site welfare facilities, storage facilities, hoarding, all access equipment, hoisting attendant labour and a central waste deposit/skip and all attendances as may be detailed in our quotation.

9.2 The Buyer shall be responsible for providing all relevant information to allow the Seller to design and manufacture the goods. Should the Buyer not be able to provide such information then the Seller will visit site to survey the works at the rate of £50.00 per hour inclusive of travel, plus £0.55 per mile on a return basis from our registered office.

## 10. Termination

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The Seller shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer and if the Goods have been delivered and/or the Services provided but not paid for the price shall become immediately due and payable if the Buyer goes into liquidation, or (in the case of an individual or firm) becomes bankrupt, makes a voluntary arrangement with his or its creditors, has a receiver or administrator appointed, or there is a reduction in the amount of credit insurance which the Buyer is approved for, or the Seller reasonably apprehends that any of the above events is about to occur.

## 11. Sub-contracting

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The Seller may licence or sub-contract all or any part of its rights and obligations under the Contract without the Buyer's consent.

## 12. Dispute Resolution

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Either party has the right to refer any dispute or difference arising under these terms and conditions to adjudication under the Housing Grants, Construction and Regeneration Act 1996. In such circumstances the following shall apply.

- (a) The nominating body for the adjudicator shall be the RICS.
- (b) Either party to these terms and conditions may give notice of adjudication at any time.
- (c) The timetable for the adjudication shall be with the object of securing an appointment of the adjudicator within 7 days of the notice of adjudication.
- (d) The adjudicator shall reach his decision within 28 days of the referral or such longer period as agreed by the parties.
- (e) The adjudicator may extend the above period of 28 days by up to 14 days with the consent of the referring party.
- (f) The adjudicator shall act impartially.
- (g) The adjudicator shall take the initiative to ascertain the facts and the law.
- (h) The adjudicator's decision is binding.
- (i) The adjudicator shall not be personally liable unless he has not acted in good faith.

## 13. Notices

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Any notice required or permitted to be given by either party to the other under these Conditions, shall be in Writing addressed to that other party at its registered office or principal place of business, or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.

## 14. Waiver

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No waiver by the Seller of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.

## 15. 'Contracts (Rights of Third Parties) Act'

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Nothing in the Contract shall confer on any person, business or company, any right to enforce any term which that person, business or company would not have but for the 'Contracts (Rights of Third Parties) Act 1999'.

## 16. Severance

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If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions of these Conditions and the remainder of the provision in question, shall not be affected.

## 17. Governing Law

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The Contract shall be governed by the laws of England, and the Buyer agrees to submit to the non-exclusive jurisdiction of the English Courts.