

**Terms and conditions of sale**

1. In these Terms and Conditions of Trade, unless the context otherwise requires:
  - 1.1 "the Company" means Euroglass Systems Limited and includes its agents, employees, successors and assignors.
  - 1.2 "Purchaser" means any person firm or corporation that has requested the supply of goods from the Company, and includes employees, agents, successors, administrators and assignors of the Purchaser.
  - 1.3 "Goods" means any item available for sale to the Purchaser by the Company and, for the avoidance of doubt, where Goods supplied are the Purchaser's Inventory (as the term is defined in the Personal Property Security Act 1999 ("the PPSA")), then all references to Goods in these terms and conditions shall, in respect of those Goods, be read as references to Inventory.
  - 1.4 "Special Order" means an order of Goods which the Company notifies to the Purchaser is a special order and includes, without limitation, an order of Goods which the Company does not stock.

**2. Quotation**

- 2.1 Quotations remain valid for 60 days from the date of the quotation unless otherwise specified and are subject to confirmation at the time of receipt.
- 2.2 Quotations are based on current costs of the Company and any subsequent increase in these costs for any reason shall be paid by the Purchaser at the price relevant to the date of sale. Acceptance of the Company's quotation shall be deemed acceptance of these terms and conditions. Unless otherwise stated, quotations do not include installation and maintenance costs, taxes, import duties or any other levies, tariffs, freight or insurance.
- 2.3 Quotations costed from sketches, plans, schedules or specifications provided by the Purchaser are subject to the accuracy of the information provided. The Company will not be held liable for inaccuracies of quantity, dimension, material or position actually required or used exceeding the quotation. Any extra cost beyond that specified, or any reduction, may be re-quoted. In the event of a price not being agreed upon for extra variations the price payable shall be the normal rates in force by the Company at the time of the performance of the work.

**3. Supply of Goods and services**

- 3.1 The Purchaser acknowledges that before agreeing to purchase any Goods from the Company, the Purchaser expressly represents and warrants that it is not insolvent and has not committed any act of bankruptcy or knows of no circumstances which would entitle any secured creditor to appoint a receiver or liquidator or exercise any other rights over or against the Purchaser's assets.
- 3.2 Any variations of an order or cancellation of an order must be agreed in writing by the Company. Variations of an order may incur price increases. If the Company accepts cancellation of an order, the Purchaser shall be liable to pay the Company upon demand, the value of all work done and materials used to the date of cancellation.
- 3.3 Any freight incurred in the delivery of the Goods shall be payable by the Purchaser.
- 3.4 Payment for Goods and services shall be made by the 20th of the month following delivery of Goods or completion of the service unless otherwise agreed by the Company in writing.
- 3.5 Pending payment, the Purchaser shall be bailee of the Company's Goods, shall exercise reasonable care in preserving the Goods against loss, damage, and destruction and shall keep the Goods separate and readily identifiable while the goods are in the possession or control of the Purchaser.
- 3.6 The Company's delivery obligations shall be satisfied by making the Goods and services available for collection at the Company's premises unless otherwise agreed by the Company in writing.
- 3.7 The Company shall use its best endeavours to meet the required delivery or installation date but will not be responsible for any loss or damage (in either case, of any kind and whether direct, indirect, or consequential) arising from any delay or fault in the delivery of the Goods and services for any reason whatsoever, including but not limited to strikes, accidents, negligence, civil commotion, epidemics, floods, extreme weather conditions, delays in obtaining materials, delays caused by other parties and acts of God. The Purchaser acknowledges that there is a greater likelihood of delay in the delivery of Special Order Goods and services. Any delay in delivery shall not invalidate the contract or subject the Company to any penalty whatsoever.
- 3.8 The Purchaser shall inspect the Goods immediately upon delivery, and carry out any tests that a prudent Purchaser would carry out.

**4. Returns/claims for credit**

- 4.1 To the extent permitted by law, all Goods procured to Special Order are:
  - 4.1.1 NON RETURNABLE; and
  - 4.1.2 supplied by the Company subject to the Purchaser hereby acknowledging and agreeing that all risk of loss, shortage, damage, poor quality, deterioration or lack of fitness for purpose shall be borne by the Purchaser.

- 4.2 Goods returned for credit must be received within 14 days from the date of invoice and will incur a minimum 20% restocking fee. Credit value is estimated until goods are inspected by the Company.
- 4.3 You must obtain a Returns Authorisation Number from the Company to attach to the returned Goods. Any Goods returned with no paperwork will be returned to the Purchaser.
- 4.4 Any Goods returned that are damaged and/or the packaging is damaged, will not be credited but returned to the Purchaser.

## **5. Risk and title**

- 5.1 The Purchaser carries the full risk in the Goods from the date that the Purchaser takes possession of the Goods.
- 5.2 Ownership of the Goods shall not pass upon delivery, but shall remain with the Company until full payment of all monies owing by the Purchaser to the Company has been made. Until all monies have been paid:
  - 5.2.1 The Purchaser holds the Goods supplied as a fiduciary for the Company and will deal with them as agent for and on behalf of the Company (but will not hold itself out as the Company's agent to any third parties);
  - 5.2.2 The Purchaser shall store the Goods separately consistent with the Goods being the Company's property and ensure such Goods are able to be separately identified; and
  - 5.2.3 If the Purchaser resells the Goods supplied the proceeds of any resale will belong to the Company, and the Purchaser will pay the same into a separate bank account for which separate records are kept, and all claims which the Purchaser holds against third parties will be handed over to the Company.
- 5.3 The Purchaser shall upon demand reimburse the Company and indemnifies the Company for all costs, expenses and other sums (including on a solicitor/client basis) reasonably incurred by the Company in exercising any right or remedy available to it consequent upon any default by the Purchaser. Any failure to pay for the Goods or services or any other amounts owed on the due date or upon the appointment of a Statutory Manager, receiver, liquidator, or if the Purchaser commits an act of bankruptcy or enters into a scheme or arrangement with its creditors, then without prejudice of any other rights or remedies available to the Company, the Company may:
  - 5.3.1 charge interest by way of liquidated damages on all amounts owed at the rate of 2% per month calculated on a daily basis from the due date for payment until the date payment is made; and/or
  - 5.3.2 withhold deliveries or cancel undelivered orders or portions thereof; and/or
  - 5.3.3 cancel any other order or arrangement between the Company and the Purchaser or suspend performance of such order, contract or arrangement pending payment;
  - 5.3.4 not less than 30 days after the due date for payment, offset the amounts owed against any money owed by the Company to the Purchaser and immediately withdraw any credit facilities; and/or
  - 5.3.5 without the necessity of giving notice, enter on and into any property or premises owned or occupied by the Purchaser or where the Goods may reasonably be expected to be, to search for and remove all or any of the Goods, dispose of the Goods removed and credit the sale proceeds towards any amount owed. If all or any of the Goods are wholly or partially attached to, intermingled with or incorporated in any other Goods, the Company may in its sole discretion disconnect, retrieve or sever the Goods, in order to remove them and shall not be liable for any loss or damage caused. The Purchaser hereby indemnifies the Company for any claims for loss or damage against the Company as a result of the exercise by the Company of its rights pursuant to this clause.

## **6. Warranty**

- 6.1 Where the Purchaser acquires the Goods or services for business purposes the Purchaser acknowledges that the provisions of the Consumer Guarantees Act 1993 ("the Act") are excluded. Nothing in these terms is intended to have the effect of contracting out of the provisions of the Act except to the extent permitted by that Act. Unless otherwise stated, the only warranty applicable to the supply of Goods and/or services hereunder is as per the written warranty handed over on delivery of the Goods.
- 6.2 If the Purchaser re-supplies the Goods in trade, then in respect of the supplies by the Purchaser to its customers the Purchaser shall:
  - 6.2.1 ensure that its customers are notified at or before the time Goods are supplied, that the Company does not undertake that repair facilities and/or parts will be available for the Goods beyond the duration of any standard product warranty which is provided with the Goods;
  - 6.2.2 contract out of the provisions of the Act where its customers are consumers who acquire the Goods for the purposes of a business;
  - 6.2.3 list all known defects in the Goods:
    - (a) on a notice displayed with the Goods; and
    - (b) on any sales agreement, docket, receipt or credit card voucher and keep a copy of the same;
  - 6.2.4 not take any steps to conceal any defects in the Goods from its customers; and
  - 6.2.5 not make any representations concerning the description of Goods if it does not correspond with the actual description and specifications of the Goods.

- 6.3 The Purchaser acknowledges and agrees that it is the Purchaser's sole responsibility to ensure that the structure to which the Goods are affixed is suitable for this purpose and that all necessary care and attention has been taken by the Purchaser to ensure that the structure to which the Goods are affixed is a suitable structure (including, without limitation, seeking appropriate advice from third parties).
- 6.4 The Purchaser hereby indemnifies the Company and shall keep the Company indemnified from and against all losses, costs, penalties, liabilities or expenses suffered or incurred as a result of:
- 6.4.1 any breach or attempted breach by the Purchaser of these terms and conditions including, without limitation, the provisions of clause 6.2;
  - 6.4.2 the structure to which the Goods are affixed not being suitable for this purpose;
  - 6.4.3 defects of any kind whatsoever in the structure to which the Goods are affixed;
  - 6.4.4 any misuse, abuse, neglect, operator error or use of improper supplies in relation to the Goods; and
  - 6.4.5 any breach by the Purchaser of any statute, regulation, order or law to which it is subject or with which it is required to comply.
- 6.4 Claims in respect of defective Goods must be notified within 7 days of receipt of Goods and defective Goods must be returned within 30 days following delivery. The Purchaser shall have no claim with regard to Goods which have already been processed, redelivered, altered or in any way utilised by the Purchaser. No claim shall entitle the Purchaser to withhold payment of any sum due to the Company under this or any other contract which the Company may have with the Purchaser nor shall a claim give any right to set off any payment due by the Purchaser to the Company.
- 6.5 The Purchaser agrees and acknowledges that Euroglass Systems Ltd assumes no liability for any direct or consequential loss or damage (including loss of profits) or any property damage or personal injury claim whether incurred or made by the Purchaser or a third party whether due to defective Goods or a breach of the terms of this contract (including that arising from the negligence or otherwise of the Company, its servants or agents).

## **7. Personal Property Securities Act 1999**

- 7.1 The Purchaser acknowledges and agrees that by assenting to these terms and conditions (by virtue of the retention of title clauses in these terms and conditions), the Purchaser grants a security interest to the Company in all Goods previously supplied by the Company to the Purchaser (if any) and all after acquired Goods supplied by the Company to the Purchaser (or for the Purchaser's account).
- 7.2 The Purchaser agrees that:
- 7.2.1 it will promptly sign any further documents or provide any further information (which information the Purchaser warrants to be complete, accurate and up-to-date in all respects) which the Company may reasonably require to enable registration of a financing statement or financing change statement on the Personal Property Securities Register;
  - 7.2.2 not register a financing change statement or a change demand in respect of Goods (as those terms are defined in the PPSA) without the Company's prior written consent; and
  - 7.2.3 give the Company not less than 14 days prior written notice of any proposed change in its name and/or other change in its details (including, but not limited to, changes in its address, facsimile number, trading name or business practice).
- 7.3 Unless otherwise agreed to in writing by the Company the Purchaser waives its right to receive a verification statement in respect of any financing statement or financing change statement relating to the security interest.
- 7.4 To the maximum extent permitted by law, the Purchaser waives its rights, and with the Company's agreement, contracts out of its rights under the sections referred to in section 107(2)(c) to (i) of the PPSA.
- 7.5 The Purchaser agrees that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions and, with the Company's agreement, contracts out of such sections.
- 7.6 The Purchaser and the Company agree that section 109(1) of the PPSA is contracted out of in respect of particular Goods if and only for as long as the Company are not the secured party with priority over all other secured parties in respect of the Goods.

## **8. Retentions**

- 8.1 It is our company policy to reject all claims for retentions. The only circumstance where retentions are accepted by Euroglass Systems Ltd, is where this is agreed to and signed by both parties.

## **9. Disputes**

- 9.1 In the event of any dispute, the undisputed portion of the account shall be payable forthwith without any deduction by way of set off, counterclaim or other legal or equitable claim without the prior written consent of the Seller.

## **10. Assignment**

- 10.1 The Purchaser may not assign, sub-let or transfer any rights or obligations implied in this contract without the prior written consent of the Company.

## **11. Severability**

- 11.1 If any part, term or provision of these terms and conditions is found to be unenforceable or rendered to be ineffective by virtue of nonregistration, illegality or otherwise, then such provision shall be severed without effecting the validity or enforceability of the rest of the agreement.

**12. Governing law**

12.1 These terms and conditions will be interpreted in accordance with and governed by the laws of New Zealand and the New Zealand courts will have non-exclusive jurisdiction in respect of all matters between the Company and the Purchaser.

**13. Personal guarantee**

13.1 See attached form for personal guarantee.

**Acknowledgement**

I certify that the information given above is true and correct and I am authorised to accept your conditions on behalf of myself, my company, other organisation or person.

I confirm that I have read and understand the above terms and conditions and that I/we shall be bound by these terms and conditions in respect of all goods or services supplied by Euroglass Systems Ltd at any time to me/us.

For and on behalf of	Date
Name and signature	Title
Name and signature	Title