

VISUAL CONCEPT LTD
GENERAL CONDITIONS OF SALE

1. **General**

- (a) 'We' means the Company; the Company means Visual Concept Ltd; the 'Quotation' means the quotation given overleaf (or where these Conditions are attached to a delivery note, invoice or acknowledgement of order, the quotation means the quotation supplied to you previously by us); 'You' means you, the Purchaser, the person, firm or company to whom the quotation, invoice, delivery note, application for payment or acknowledgement of order is addressed and the 'Goods' means the goods the subject of the quotation, delivery note, invoice, applications for payment or acknowledgement of order, respectively. 'Contract' means the contract for the sale of the Goods as set out in the quotation, invoice, delivery note, acknowledgement of order and these conditions, and any other documents signed by the parties and expressly stated to form part of the Contract.
- (b) All illustrations, data and other information contained in our brochures, catalogues, advertisements, price lists, technical data sheets or other documents are approximate only, and shall not form part of the contract.
- (c) These Conditions supersede any earlier conditions appearing in any of our documentation (other than special conditions) and all representations terms conditions warranties or guarantees whether express or implied arising by statute common law or otherwise are (to the extent permissible by law) hereby excluded provided that nothing in these Conditions shall operate to exclude or restrict liability for personal injury or death resulting from our negligence or to exclude the provisions of Section 12 of the Sale of Goods Act 1979.
- (d) If the whole or any part of any one or more provisions of the Contract would be deemed unreasonable pursuant to the Unfair Contract Terms Act 1977 or unfair pursuant to the Unfair Terms in Consumer Contracts Regulations 1994, such provisions shall not apply to the extent that they would thereby be unenforceable.
- (e) If the whole or any part of any one or more provisions of the Contract are invalid or unenforceable at law, all the other provisions of the Contract shall remain in full force and effect and the parties shall negotiate in good faith to agree and implement one or more substitute provisions having similar effect so far as the law permits.
- (f) No variation of the Contract shall be effective unless it is in writing, signed by us and expressly stated to be a variation of the Contract.
- (g) Any notice given in connection with the Contract may be sent by hand or by registered post or by the recorded delivery service or transmitted by facsimile resulting in the receipt of a written communication. Any notice so sent or transmitted to the address of the party shown in the Contract (or such other address as such party may by notice to the other half substitute therefore) shall be deemed validly and effectively given on the day when, in the ordinary course of the means of transmission, it would first be received by the addressee in normal business hours at the place of receipt.

2. **The Price and the Payment Terms**

- (a) All prices are exclusive of VAT and unless specifically stated are based upon costs current at the date of the Quotation. Additional charges will be made in respect of all increases in the cost of labour, materials, plant and overheads occurring after the date of the Quotation. Where a formula based method of calculating increases is stated in the Quotation the additional charges will be calculated in accordance with such formula rules. Where you expressly wish us to deliver outside England, we are entitled to levy extra charges.
- (b) Each consignment of the Goods will be invoiced separately and payment against our invoice shall fall due in full on the last day of the month following that in which the Goods were despatched.
- (c) If for any reason you are unable to accept delivery when due, the Goods will be invoiced and payment will fall due on the last day of the month following that in which the Goods are ready and due for delivery. In such cases we will, if facilities permit, store the Goods at your risk until delivery and reserve the right to make additional charges for such storage and any extra handling and transportation. This clause shall not affect any rights we may have against you for failure to accept delivery.
- (d) If you fail to make any payments when due we may, at our option and without prejudice to any other rights or remedies which we may have under the Contract or otherwise, suspend further deliveries until payment is made or terminate the Contract. We shall be entitled to charge interest on the outstanding balance of all overdue accounts from the time of default to the time of payment calculated on a daily basis at a rate of 2.5% per month as well after as before judgement.
- (e) At the Company's option all glass will be measured and charged for in accordance with the principle of the Standard Method of Measurement, except where made or processed at the factory to special sizes, which are subject to minimum size charges detailed in any of our tariffs or Quotations. Ovals, circles or irregular shapes will be charged the full size of the rectangular pane from which they are cut. Where more than one pane of any size is to be invoiced, the area of the pane will be calculated and rounded up to two decimal places of a square metre, and this will be multiplied by the number of panes. Imported glass supplied may be measured and charged for in accordance with the rules of custom and practice of the country from which the glass is imported.
- (f) All payments are to be made without deduction or set-off from any sums owing or due from us.

3. **Your Obligation to Us**

- (a) The loading, handling, working or carrying of your own materials shall be entirely at your risk. You are responsible for the loading and unloading of the Goods and also for any damage to the Goods during loading and unloading, howsoever caused.
- (b) If you wish the Goods to comply with any specification, you must notify us of these requirements in writing and any such specification must be agreed by us in writing, prior to us entering into the Contract.
- (c) You shall not assign the benefit of this Contract without prior written consent.
- (d) By accepting the Quotation, you warrant that the use of the Goods is appropriate to the intended application and their use complies with all local and national legislation, building regulations, standards, codes of practices and any other requirements particularly but without limitation the safety section of BS6262 1982 British Standard Code of Practice of Glazing for Buildings and Building Regulations 1991

Document N, (and any regulations or codes of practice amending, superseding or in addition to the same) copies of which are available for inspection at our Offices at the address stated overleaf. You agree to indemnify us for all injury, loss or damage occurring to any person or property and against all actions, demands, expenses or charges made in connection with the Contract arising from the use of the Goods where the use of the Goods results in injury, damage or loss due directly or indirectly to the carelessness or negligence of you or your servants or agents or to any breach by you or your obligations to us under the Contract.

4. **Delivery**

- (a) Times or dates for despatch or delivery of Goods or for completion of any works to be carried out by us are estimates only and shall not be binding upon us either as a term of the Contract or otherwise. In no circumstances shall we be liable for any loss or damage sustained by you in consequence of our failure to deliver, start or complete within such time or by such date or in consequence of any delay in delivery however caused.
- (b) Notwithstanding Clause 6, when we deliver the Goods, risk shall pass to you on delivery. In all other cases risk shall pass to you on despatch.
- (c) Where delivery is to be made by instalments each delivery is deemed to be the subject of a separate Contract and any failure by us in respect of any one delivery shall not entitle you to repudiate the Contract or any further instalments to be delivered thereunder.

5. **Your Rights and our Rights**

- (a) You agree to inspect the Goods immediately upon delivery or collection and any defective Goods must be returned within 7 days of receipt in the same condition as they were supplied save that where the Goods have been used or installed and it is not practicable to return them you must notify us in writing of the alleged defect within 7 days of delivery, no condition is made or to be implied nor is any warranty given or to be implied as to the life or wear of the Goods supplied or that unless the goods are sold by a specification in accordance with Clause 3(b) they will be suitable for any particular purpose or for the use under any specific conditions notwithstanding that such purpose or condition may be known or made known to us.
- (b) The supply of Goods hereunder shall not confer any right upon you to use any of our trademarks without our prior written consent and at all times such trademarks shall remain our property. Nor does it imply any right to use any patent, which we may have or any indemnify against infringement of the right of third parties.
- (c) In no circumstances can orders for Goods, whether made to your specific requirements or not, be cancelled by you. In the event of such a cancellation you will be obliged to pay a restocking and handling charge for the Goods and any administration costs involved in full.
- (d) If you commit any breach of these terms and conditions or become insolvent or commit an act of bankruptcy or if a Receiver or Administrative Receiver is appointed over any part of your business or property, then we may defer or cancel any further deliveries and treat the Contract of which these Conditions form part as having been repudiated by you, but without prejudice to any of our other rights and remedies hereunder.
- (e) No failure by us whether by way of indulgence or otherwise to enforce or delay in enforcing our rights hereunder shall operate as a waiver of any of our rights.
- (f) We shall not be liable for any consequential or indirect loss suffered by you whether this loss arises from breach of contract or tort or in any way (including but not limited to loss arising from our negligence). Consequential or indirect loss shall include (but shall not be limited to) loss of profits, goodwill, contracts and consumers. Our total liability for any one claim or for the total of all claims arising from any one act or default by us (whether arising from our negligence or otherwise) shall not exceed the price of the Goods. Without prejudice to any other time limits expressed, we shall not be liable for any claim unless: -
 - (i) Notes containing reasonable details of the claim have been given to us within three months of the matters giving rise to the claim becoming known to you: and
 - (ii) Legal proceedings in respect of the claim (if not previously satisfied) are begun within two years of such date
- (g) Unless otherwise specifically agreed in writing by us the Goods are supplied only on these conditions and no variation from or addition thereto (whether contained in any document emanating from you or made orally by any person acting or purporting to act on our behalf) shall have effect unless it is in writing signed by a person duly authorised on our behalf. Should any of these Conditions conflict with any conditions stated in your order these Conditions shall prevail. The giving by yourselves of any delivery instructions for the Goods or any part thereof or the acceptance by you of delivery of the Goods or any part thereof or any document by you in confirmation of the transaction set out on the basis hereof, after receipt by you of this document, shall constitute unqualified acceptance by you of these Conditions.

6. **Retention of Title Of The Goods By Us**

- (a) Title of the Goods are to remain with us until we have received payment from you of the full purchase price of the Goods. Any payment by you to us shall only be treated as received by us when a cheque or any other method of payment has been met on presentation or otherwise honoured and you acknowledge that you are in possession of the Goods solely as bailee for us until then. In the event of any of the Goods supplied being resold by you or being mixed or incorporated with any other Goods which are sold by you before title therein has passed to you, you shall hold such part of the proceeds for sale as are equivalent to the price at which the

Goods are supplied by us to you, and all rights which you may have against the purchasers thereof, on behalf of and as trustee for us. Any monies so received by you shall be placed in a separate account so as to be readily identifiable as being our property.

- (b) Until such time as title in the Goods passes to you, you will store them on your premises separately from your own Goods or those of any other person and in a manner, which makes them readily identified as our Goods.
- (c) If you commit any breach of these terms and conditions or become insolvent or commit an act of bankruptcy or if a receiver or an administrative receiver is appointed over any part of your business or property your right of possession of the Goods shall cease immediately. We (including our servants and our agents) are authorised by you to enter upon any premises where the Goods are stored or where they are reasonably believed to be stored, for the purpose of ensuring that the terms of this Clause 6 are being complied with and in the circumstances set out in this Clause 6(c) for the purpose of removing any Goods in which title has not passed to you.

7. **Applicable Law**

These Conditions shall be considered as a contract made in England and shall be governed in all respects by the Law of England and the parties agree to submit to the jurisdiction of the Courts of England.

8. **Force Majeure**

- (a) We will not be liable for any failure to deliver the Goods arising from circumstances outside our control which shall be deemed to include (but shall not be limited to) war, riot, civil commotion, fire, earthquake, obstruction of private or public road or highway, acts of God, exceptional weather, strikes, lockouts or any other form of industrial action, shortages of materials and delay in delivery of materials by supplies or sub-contractors.
- (b) If we are prevented from delivering the Goods in circumstances outside our control, we shall give you written notice of this fact as soon as reasonably practicable after discovering the same.
- (c) If the circumstances prevailing our delivery of the Goods are still continuing three months after you receive our notice as referred to in (b) above, either party may give written notice to the other terminating the Contract.
- (d) If the Contract is terminated in the manner set out in (c) above, we shall refund any payment which you have already made on account of the price of the Goods not delivered, subject to deduction by us of any amount we are entitled to claim from you. We shall not be liable to compensate you for any further loss or damage caused by our failure to deliver the Goods or any of them.

9. **Where Fixing is Carried Out By Us**

The following additional clauses shall apply where the Goods are to be fixed on site or at your premises by us. The work means the supplying and fixing of the Goods by us and the Order means the acceptance by you in whatever form of our Quotation.

- (a) The Work will be performed during our normal working hours.
- (b) In the event that we have accepted an order for glazing/fixing Goods supplied by others, this shall be done at your risk in all respects and we will accept no liability for loss or damage attributable to defects in such Goods.
- (c) Where we have prepared working drawings, you or those acting on your behalf shall approve such drawings and we shall not be liable in respect of work shown thereon which has been or is to be carried out by persons other than us.
- (d) The work shall be executed within the period of time stated in the Quotation or in accordance with a programme of Work to be agreed in writing with the proviso that any dates stated in the Quotation or such programme shall be subject to confirmation after all working sizes and other measurements have been taken and agreed in writing, but in any event such dates from us shall be estimates. We shall be afforded proper access to site to enable working sizes and measurements to be taken. Any alterations or deviation from such programme shall thereafter only be made by mutual agreement. A fair and reasonable extension of time to the period stated in the Quotation or to the agreed programme shall be made by you in the event of us suffering delays caused by war, riot, civil commotion, fire, earthquake, obstruction of private or public road or highway, force majeure, Acts of God, exceptional or any other unforeseen circumstances beyond our reasonable control.
- (e) You must give the minimum period of notice stated in the Quotation in writing before we are obliged to commence Work on site. Free and adequate access to the site shall be provided by you at all times. Hard standings and approach roads suitable for our vehicles shall be available to allow for the handling of materials and a suitable area for storage of materials. Any hutting, which may be required, shall be made available within close proximity to the place at which the Work is to be executed.
- (f) Unless specifically stated prices quoted do not provide for making templates for shaped or bent plates and should any of these be required, reasonable additional charges will be made.
- (g) Where glass is secured other than by face pointing, all beads, fixing screws etc required must be provided by you free of charge.
- (h) In areas of framework and/or glass are omitted to allow access by other trades or for the purpose of tying scaffolding and such Work is then required to be executed at a later date, this shall be subject to a fair and reasonable extension of time and an additional charge.
- (i) If the Work of proceeding trades is found to be outside the agreed tolerances indicated on the approval drawings it may, at our option, be corrected to within the limits of the agreed tolerances and any delay in so doing shall be the subject of a fair and reasonable extension of time and any resultant cost shall be charged by you.
- (j) In the absence of any previous arrangements to the contrary, glass or any other material salvaged during the course of the Work is deemed to be our property.
- (k) You shall supply, erect, adjust and dismantle, at no cost to us, all scaffolding to comply with statutory requirements, boarded out at levels to suit our requirements and acceptable as being suitable and safe for our Work to be performed and also suitable lifting gear as deemed necessary by us. Scaffolding as referred

to herein be rigid scaffolding and in the event that towers, cradles or other forms of mobile scaffolding are provided, we reserve the right to amend prices and/or to make an extra charge.

- (l) Where necessary, materials shall, without any consequential charge or risk to us, be hoisted by you to the appropriate level and stacked not more than 10 metres from the position in which they are to be incorporated in the Works.
- (m) You shall provide on site, at no charge to us, all equipment and facilities required to enable us to fulfil the requirements of the Building (Safety, Health and Welfare) Regulations, the Factories Act and all other applicable requirements.
- (n) There will be provided by you at no charge to us 110 volt power at such points as may be requested not more than 10 metres from the working area such supply to be in full accordance with any statutory regulations.
- (o) No allowance has been made in the Quotation in respect of any item of builders Work. All builders Work which may be required including, but not limited to, cutting of chases, marking out, drilling holes, making good, setting and lining of fixing bolts and the like and where shown on the drawings the provision of continuous timber grounds set to line and level for seating sill and/or jamb members shall be executed by you at no charge to us in such a manner and time so as to in no way disrupt the regular progress of the Work.
- (p) Our liability for damage or breakage from whatever cause shall cease when the glass is glazed or when the Goods have been fixed in position.
- (q) No provision has been made in the Quotation for cleaning glass and frames or removal of protective coatings.
- (r) Our insurances in respect of public liabilities and third party liability indemnify you or your agent against any claims arising from damage to the premises at which we are working and/or injury to any person or persons within or adjacent to those premises provided that such injury is due to proved negligence on our part or on the part of our employees. Save as provided in this paragraph 9(r) we have no obligations to indemnify or to insure. You will be responsible for insuring in our joint names against loss and damage by fire, lighting, explosion, storm, tempest, flooding, bursting or overflowing of water-tanks, apparatus and pipes, earthquake, aircraft and other aerial devices or articles dropped there-from riot and civil commotion all Work executed and all unfixed materials and Goods delivered to or placed on or adjacent to the site or your premises and shall retain such insurance until practical completion of the Work. In the event of such loss or damage, we will reinstate or make good such loss or damage and carry out and complete the Work. The reinstatement and making good of such loss or damage shall be deemed to be a variation under paragraph(s) below. If it is just and equitable we may determine our employment under the Contract within 10 days of the occurrence of such loss and damage.
- (s) You will be entitled to vary the design, quality and quantity of the Work subject to our agreement and on adjustment acceptable to us to the price payable and the period for completion of the Work and any other forms of the Contract of which these Conditions form part which we may consider relevant.
- (t) You will be responsible for the removal of all rubbish arising from the execution of the work at no cost to us, unless otherwise agreed in writing.
- (u) Unless otherwise agreed in writing between us, payment for the Work shall be made in accordance with the following terms: -
 - (i) Regular monthly stage payments shall be paid by you to us, the first such payment being due on the last day of the month following that in which the Goods are despatched or the Work is due to commence as appropriate.
 - (ii) Each stage payment shall comprise the total value of work executed and materials and Goods delivered to site for use thereon by us prior to the date of such stage payment together with any other amounts then due, less only the aggregate amount of any previous stage payments and any agreed retention but subject to no other deductions whatsoever.
 - (iii) In respect of any materials or Goods, which through no fault on our part are required to be held in store, the value of the same together with any charges in respect of storage or re-handling shall be included in each monthly stage payment. If you fail to make any payment when due we may, at our option, and without prejudice to any other rights under the contract suspend further Works until such payments is made or terminate the contract. We shall be entitled to charge in full with all interest where applicable interest on the outstanding balance of all overdue accounts from the time of default to time of payment (as well after as before judgement) calculated on a daily basis at a rate of 2.5% per month.
- (v) In general we accept no liability for liquidation and ascertained damages. If however these are specified and accepted in writing by us, then our liability will be limited in all circumstances to 10% of the value of our order.
- (w) No performance bonds, collateral warranties, parent company guarantees will be provided by us unless we agree in writing and such agreement is signed by a Board Director of the Company.