

TERMS AND CONDITIONS



1. DEFINITIONS

- 1.1. **Conditions:** the terms and conditions set out in this document as amended from time to time.
- 1.2. **Contract:** means a specific contract and/or a purchase order and/or a quotation and/or BOQ or the like regarding the supply of the Goods and Services entered into between, amongst others, DGW and the Customer (including, but not limited to all appendices, agreed amendments, additions or revisions to such Contract).
- 1.3. **Customer:** the person or firm who agrees and accepts to purchase the Goods and/or Services from DGW.
- 1.4. **DGW:** means Dar es Salaam Glass Works Limited.
- 1.5. **Force Majeure Event:** an event or circumstance beyond a party's reasonable control.
- 1.6. **Goods:** the goods (or any part of them) set out in the Contract in accordance with these Terms and Conditions.
- 1.7. **Services:** the services defined in the Contract to be provided by DGW to the Customer under the Contract and in accordance with these Terms and Conditions. What is later stated in these Terms and Conditions regarding the Goods shall in all relevant part apply to the Services.
- 1.8. **Specification:** any specification for the Goods, including any related plans and drawings, that is agreed by the Customer and the Supplier.

2. BASIS OF CONTRACT

- 2.1. These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.2. The Contract constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Contract and any applicable Specification are complete and accurate.
- 2.3. By accepting the Contract, the Customer agrees to comply with these Conditions. A Contract shall be deemed accepted by the Customer if the Customer has not objected to the Contract within five (5) working days after the date the Contract is issued or if DGW has already started delivery and/or performance of the Goods.
- 2.4. The Conditions shall also apply to all future transactions between DGW and the Customer unless another version of these Conditions has been made available by DGW in which case such other version shall prevail.

3. GOODS

- 3.1. The Goods are described in the Contract or any accompanying Specification approved by DGW (in writing) and appended to the Contract.
- 3.2. DGW reserves the right to amend the specification of the Goods if required by any applicable statutory or regulatory requirements.
- 3.3. DGW shall be granted unencumbered access to the proposed site where all intended works in respect of the Goods are to be carried out. The Customer undertakes to provide power, security, secure storage (if needed) for materials whilst any works are being carried out by DGW for and on behalf of the Customer.

4. DELIVERY

- 4.1. DGW shall ensure that each delivery of the Goods is accompanied by a delivery note that shows the date of the Contract, the contract number or any other relevant Customer reference numbers.
- 4.2. Delivery is completed on the completion of unloading of the Goods at the agreed location.
- 4.3. Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. DGW shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide DGW with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.4. If ten Business Days after the day on which DGW notified the Customer that the Goods were ready for delivery the Customer has not taken and/or accepted delivery of them, DGW may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.

5. TITLE AND RISK

- 5.1. The risk in the Goods shall pass to the Customer on completion of delivery.
- 5.2. Title to the Goods shall not pass to the Customers until DGW receives payment in full (in cash or cleared funds) for the Goods and any other Goods DGW has supplied to the Customer in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums.
- 5.3. If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in Clause 8.1, then, without limiting any other right or remedy DGW may have, DGW is entitled to enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

6. QUALITY

- 6.1. DGW warrants that upon passing of title (pursuant to Clause 5.2 above), and for a period of 6 months from the date of delivery (warranty period), the Goods shall: (a) conform in all material respects with their description and any applicable Specification as each shall be set out in the Contract; and (b) be free from material defects in design, material and workmanship.
- 6.2. DGW shall not be liable for the Goods' failure to comply with the warranty set out in Clause 5.1 in any of the following events: (a) the Customer makes any further use of such Goods after giving notice in accordance with Clause 5.2; (b) the defect arises because the Customer failed to follow DGW's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same; (c) the defect arises as a result of DGW following any drawing, design or Specification supplied by the Customer; (d) the Customer alters or repairs such Goods without the written consent of DGW; (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or

working conditions; or (f) the Goods differ from their description/the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

- 6.3. Except as provided in this Clause 6, DGW shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in Clause 5.1.

7. PRICE AND PAYMENT

- 7.1. The price of the Goods shall be the price set out in the Contract and shall include all taxes, charges and duties, except for VAT which will be shown separately on the invoice when applicable.
- 7.2. The price of the Goods: (i) excludes amounts in respect of value added tax (VAT), which the Customer shall additionally be liable to pay to DGW at the prevailing rate, subject to the receipt of a valid VAT invoice; and (ii) excludes the costs and charges of packaging, insurance and transport of the Goods, which shall be invoiced to the Customer.
- 7.3. Subject to commercial discussion, DGW may invoice the Customer for the Goods on or at any time.
- 7.4. The Customer shall pay all payment obligations raised by DGW (in writing) in full and in cleared funds within 21 days of the date of the relevant notice and/or issuance of a completion certificate to the designated bank account nominated. Time for payment is of the essence. If the Customer has not discharged this payment interest shall accrue at the rate of 4% per annum above NIC Bank's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
- 7.5. The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). DGW may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by DGW to the Customer.
- 7.6. DGW may, by giving notice to the Customer at any time before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to: (i) any factor beyond the control of DGW (including, but not limited to foreign exchange fluctuations, increases in taxes and duties, and increase in labour, materials and other manufacturing costs), (ii) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Specification, (iii) any delay caused by any instructions of the Customer or failure of the Customer to give DGW adequate or accurate information or instructions.

8. TERMINATION

- 8.1. Without limiting its other rights or remedies, DGW may terminate this Contract with immediate effect by giving written notice to the Customer if: (a) the Customer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 20 days of that party being notified in writing to do so; or (b) the Customer's financial position deteriorates to such an extent that in DGW's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 8.2. Without limiting its other rights or remedies, DGW may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment.
- 8.3. On termination of the Contract for any reason the Customer shall immediately pay DGW all of its outstanding unpaid invoices and interest.

9. LIMITATION OF LIABILITY

- 9.1. DGW shall under no circumstances whatsoever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract.
- 9.2. DGW's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed 10% of the price of the Goods.

10. FORCE MAJEURE

Neither party shall be in breach of this Contract nor liable for delay in performing, or failure to perform, any of its obligations under this Contract if such delay or failure result from a Force Majeure Event, provided that the other party is notified in writing of these circumstances by the affected party as soon as it becomes aware of the occurrence of such event and that the affected party uses all reasonable endeavours to prevent, avoid, overcome or mitigate the effects of such cause. If DGW is unable to fulfil its obligations due to a Force Majeure Event for a period exceeding 20 Business Days, DGW is entitled to terminate the Contract with immediate effect without any liability towards the Customer.

11. ENTIRE AGREEMENT

The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

12. GOVERNING LAW

The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the law of the United Republic of Tanzania.