

HOLDENS SUPASEAL LIMITED TERMS AND CONDITIONS OF SALE

These terms and conditions apply for any order from a Customer (as defined below) for the purchase of Products (as defined below) from Holdens Supaseal Limited ("HSL").

Any order and subsequent purchase of Products shall be governed solely by the following terms and conditions.

Interpretation

In these Conditions, unless the context otherwise requires the following expressions shall have the following meanings:

"Conditions"	means the standard terms and conditions of sale set out in this document and any other terms and conditions specified by HSL on its acknowledgement of order;
"Contract"	means a contract for the supply of the Products from HSL to the Customer;
"Customer"	means the individual, firm, company or other party with whom HSL contracts on these Conditions;
"HSL"	means Holdens Supaseal Limited (Company number 1296553), whose registered office is at 33 Lionel Street, Birmingham B3 1AB
"Products"	means the double glazed sealed units and other related products that the Customer wishes to purchase as set out in the order;
"Price"	means the price of the Products as set out in clause 6 below;
"Quotation"	any quotation issued by HSL to the Customer in connection with the supply of the Products; and
"Writing"	any written form including facsimile transmission, email and comparable means of communication.

Contract Terms, Variations and Acknowledgements

The Contract shall be subject to these Conditions and except as provided in clause 2.3 no representative or agent of HSL has authority to agree any terms or make any representations inconsistent with them or to enter into a Contract except on the basis of these Conditions.

The Contract will be subject to these Conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Customer purports to apply whether before or after these Conditions under any purchase order, confirmation of order, specification or pre-contract negotiations) or any inconsistent terms implied by law or trade custom, practice or course of dealing.

These Conditions apply to all of HSL's sales under these Conditions for the Products and any variation to these Conditions and any representations about the Products shall have no effect unless expressly agreed in writing and signed by a director of HSL.

Quotations

No order shall be binding on HSL unless and until such order is accepted by HSL pursuant to clause REF_Ref46896803 \r \h * MERGEFORMAT 3.2. If HSL so requires verbal orders shall be confirmed by the Customer in writing..

Each order for Products by the Customer shall be deemed to be an offer by the Customer to purchase Products on these Conditions. No order placed by the Customer shall be deemed to be accepted by HSL until a written

acknowledgement of order is issued by HSL or (if earlier) HSL delivers the Products to the Customer unless agreed otherwise in writing. No changes may be made to an order once it has been accepted by HSL.

HSL has absolute right to refuse acceptance of any order.

Except when incorporated in the Quotation by specific reference all specifications, drawings, particulars of weight, shapes, descriptions, illustrations, prices and other advertising material contained in HSL's website, catalogues, photographs or brochures are issued or published for the sole purpose of giving an approximate idea of the Products described in them and will not form a representation or be part of the Contract.

Any drawing, photographic material of any description, catalogue, literature, leaflets, blueprints, Quotations and all or any other documents produced for the purpose of providing the Products and all intellectual property rights in the same shall remain the exclusive property of HSL and shall not be copied or otherwise reproduced by the Customer without first obtaining consent in Writing.

HSL shall make every effort to ensure that all orders are fulfilled, however HSL cannot guarantee the availability of Products. If the Products the Customer has ordered are unavailable, HSL will contact the Customer to offer a replacement or a refund.

Customer Obligations

4.1 By submitting an order the Customer warrants, represents and undertakes that the Customer will supply, full, accurate and complete details of the Customer as may be reasonably requested by HSL including without limitation the full name and address of the Customer.

Price of the Products & Credit Accounts

Without prejudice to clause 5.2 the price of the Products shall be as set out in the price catalogue of HSL.

Unless stated otherwise the price for the Products are exclusive of any value added tax, and all other taxes, duties and other government charges and all costs or charges in relation to loading, unloading, carriage, delivery, insurance and shipment of the Products. Wherever possible such additional costs as specified in this clause 5.2 shall be quoted in the price-book. Where this is not possible HSL will supply details of the additional costs within 5 days of receipt of the order.

All credit accounts are granted at the option of HSL and HSL reserve the right to suspend, revise or cancel any terms of payment without notice and at their own option. Notwithstanding any other provision in this Agreement HSL reserve the right where credit limits have exceeded or payments are unsatisfactory to suspend delivery and cancel any outstanding contracts without liability and to take the necessary steps to enforce payment for all Products delivered without regard to any credit terms previously agreed.

When application for credit is accepted and orders are not placed within 3 months of the account being opened reapplication for credit will have to be applied and the original acceptance will be automatically declined.

Terms of payment

HSL requires payment in full in UK Pounds Sterling within 30 days from the end of the month of the date of the invoice submitted by HSL and the Customer shall pay the requisite price of the Products. Invoices shall be issued when the Products are delivered to the Customer's address specified on the order.

The time for payment of the price shall be of the essence of the Contract and the Customer shall not withhold payment for any reason whatsoever including but not limited to where the parties are in dispute in relation to the Contract or any part thereof. All payments for the Products shall be made to HSL by the Customer. All credit accounts beyond HSL's credit terms will be passed to HSL's debt collector. HSL understand and will exercise our statutory right to claim interest and compensation for debt recovery costs under if HSL are not paid according to agreed credit terms. Late accounts will also be subject to any other legal costs incurred in obtaining settlement.

No payment shall be deemed to have been received until HSL has received cleared funds in full. The Customer shall make all payments due under the Contract without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise. HSL reserves the right to suspend or terminate any order for future deliveries if payment for Products already delivered is not made in accordance with this Agreement.

The Customer shall indemnify HSL for all costs including without limitation interest, legal costs, debt recovery costs for all invoices that are not paid within the timescales set out in clause 6.1.

Delivery

Delivery of the Products shall take place when the Products arrive at the Customer's address specified on the order. If delivery of the Products does not take place because of the fault of the Customer HSL shall be entitled to charge a re-delivery fee for a return visit to deliver the Products.

Any dates quoted or specified by HSL for delivery of the Products are approximate only and time for delivery shall not be of the essence or made of the essence by notice. In the event that no date for delivery is specified, delivery will be within a reasonable time. The Products may be delivered by HSL in advance of the quoted delivery date upon giving reasonable notice to the Customer.

Subject to the other provisions of these Conditions HSL will be liable for any loss (including but not limited to loss of profit), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Products (even if caused by HSL's negligence), nor will any delay entitle the Customer to terminate or rescind the Contract unless such delay exceeds 180 days.

The Customer will take delivery of the Products as soon as reasonably practicable when HSL shall give the Customer notice that the Products are ready for delivery.

If for any reason the Customer fails to take or will not accept delivery of the Products when they are ready for delivery, or HSL is unable to deliver the Products on time because the Customer has not provided appropriate instructions, documents, licenses or authorisations then without prejudice to any other right or remedy available to HSL:

HSL may store the Products until actual delivery whereupon the Customer will be liable for all related costs and expenses (including without limitation storage and insurance) and HSL will be entitled to invoice the Customer for such costs and expenses monthly in arrears;

the risk in the Products will pass to the Customer;

the Products will be deemed to have been delivered;

HSL may sell the Products at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Customer for the excess over the price under the Contract or charge the Customer for any shortfall below the price under the Contract.

7.6 Any pallets delivered with the Products are at all times the property of HSL and shall be returned to HSL by the Customer within 28 days of the date of delivery of the Products. If pallets are not returned to HSL or are damaged whilst on the premises of the Customer or the end customer HSL shall be entitled to levy a charge of £450 per pallet to the Customer.

Inspection of Products

Upon delivery of the Products the Customer must inspect them carefully. If any of the Products do not match the description or appear to be damaged or are missing, the Customer must not use the Products or any items accompanying the Products, and the Customer should contact HSL immediately in writing by email and phone.

The Customer must notify HSL immediately if there are any defects in the Products which are apparent through inspection or use of the Products.

If the Products are defective on delivery, HSL shall in its absolute discretion as the sole remedy repair or replace such Products or give a refund.

If the Products are defective in accordance with any of Clauses 8.1 to 8.3 the Customer agrees to return the defective Products to HSL in the same and "as new" condition as when received including all items and packaging accompanying the Products.

The quantity of any consignment of Products as recorded by HSL's dispatch note shall be conclusive evidence of the quantity received by the Customer on delivery unless the Customer can provide conclusive evidence proving the contrary.

Risk and Title

The risk of damage to or loss of the Products shall pass to the Customer:

on delivery; or

the date on which the Customer defaults (which expression shall have the meaning set out in clause 9.2); or

the date on which the Products being ready for delivery, delivery or performance of the Contract is postponed at the Customer's request

whichever shall first occur. For the avoidance of doubt delivery of the Products shall be deemed to be completed when delivered at the Customer's address.

For the purpose of clause 9.1.2 "default" shall mean if the Customer fails to take delivery of the Products on the due date or fails to provide an address for delivery of the Products as required.

Title in the Products shall pass to the Customer when the Products are delivered to the address of the Customer provided that HSL has received payment in full for the Products.

Warranty and Liability

HSL warrant for a period of 10 years from the date of dispatch from the offices of HSL that (subject to the other provisions of these Conditions), the Products will be of satisfactory quality as set out in the 10 Year Warranty for Sealed Double Glazed Units attached to this Contract.

Save as provided in this Clause 10, HSL shall not be under any liability whether in contract, tort or otherwise in respect of any deficiency in the Products or for any damage or loss resulting from any such deficiency or from any work done or omitted. The remedies specified herein shall be the Customer's sole and entire remedy in respect of any breach of the foregoing warranties, non conformity of or deficiencies in the Products.

The foregoing warranties shall be in lieu of any and all other warranties, conditions or guarantees as to description, quality, fitness for any particular purpose, satisfactory or merchantable quality of the Products or any other warranty, condition or guarantee whether express or implied except any statutory implied terms as to title.

Limitation of Liability

The following provisions set out the entire financial liability of HSL (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:

any breach of these Conditions or the Contract;

any use made or resale by the Customer of any of the Products, or of any product incorporating any of the Products; and

any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.

Save as expressly provided in these Conditions all warranties, conditions and other terms implied by statute or common law (save for the conditions implied by Section 12 of the Sale of Goods Act 1979 and Section 2 of the Supply of Goods and Services Act 1982) are, to the fullest extent permitted by law, excluded from the Contract.

Nothing in these Conditions excludes or limits the liability of HSL for death or personal injury caused by HSL's negligence or fraudulent misrepresentation or liability to consumers for defective products under the Consumer Protection Act 1987.

HSL's total liability in contract, tort (including negligence or breach of statutory duty or where the Products breach, infringe or make unauthorized use of third party rights), misrepresentation, restitution or otherwise arising in connection with the performance or contemplated performance of the Contract shall not exceed the price of the Products.

HSL shall not be liable to the Customer for any loss of profits or for any indirect, special or consequential loss or damage (whether for loss of business, depletion of goodwill or otherwise), costs or expenses or other claims for compensation whatsoever (howsoever caused) which arise out of or in connection with the supply of the Products.

HSL accepts no responsibility or liability where the Products cannot be provided as a result of any act or omission of the Customer and in such event the Customer shall still be liable to pay HSL for the Products as if the same had been duly performed.

Force Majeure

HSL reserves the right to defer the date of delivery or to cancel the contract or reduce the volume of the Products ordered

by the Customer and shall not be liable to the Customer or be deemed to be in breach of the Contract if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of HSL. In the event that the delay continues for a continuous period in excess of 3 months, the Customer or HSL shall be entitled to give notice in writing to HSL to terminate Contract.

Assignment

13.1 Neither party shall be entitled to assign the Contract or any part of it without the prior written consent of the other party.

General

Failure or delay by HSL in enforcing or partially enforcing any provision of the Contract will not be construed as a waiver of any of its rights under the Contract.

The parties to this Contract do not intend that any term of this Contract will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

No waiver by HSL of any breach of, or any default under, any provision of the Contract by the Customer shall be considered or be deemed as a waiver of any subsequent breach or default of the same and will in no way affect the other terms of the Contract.

The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by the laws of England and the parties submit to the exclusive jurisdiction of the English Courts.

Communications

All communications between the parties about the Contract must be in writing and delivered by hand or sent by first class post or sent by facsimile transmission or by email :

(in case of communications to HSL) to its registered office or such changed address as shall be notified to the Customer by HSL; or

(in the case of communications to the Customer) to the registered office of the addressee (if it is a company) or (in any other case) to any address of the Customer set out in any document which forms part of this Contract or such other address as shall be notified to HSL by the Customer.