

# TERMS & CONDITIONS

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## 1. Definitions and Interpretation

"Agreement" means the agreement between the Contractor and the Customer for the Work, consisting of the Quote/Work Authorisation and these Terms and Conditions.

"Australian Consumer Law" means the Australian Consumer Law as stated in Schedule 2 of the Competition and Consumer Act 2010 (Cth) as amended from time to time.

"Claim" includes any claim, including a notice, demand, debt, account, expense, damage, loss, cost, lien, liability, proceeding, litigation (including reasonable legal costs), investigation or judgment of any nature, whether known or unknown.

"Contractor" means Greater Glass Pty Limited ABN 74 150 398 084 its successors and assigns and any person acting on behalf of and with the authority of Greater Glass Pty Limited.

"Customer" means the person or entity named on the quote or Work Authorisation provided by the Contractor.

"Goods" includes, but is not limited to, glass and glass products including doors, windows, splash backs, mirrors, shower screens, glass roofs, glass fencing, glass walls, film and any other associated equipment or hardware and parts therefore, as described on the Quote, tax invoices and other documents supplied to the Customer. "Site" means the place where the Work will be carried out, or such other address nominated by the Customer.

## 2. Acceptance of Trading Conditions

The Customer agrees and acknowledges that it has received the Trading Conditions, understands the Trading Conditions, and agrees to be bound by the Trading Conditions.

## 3. Quotes/ Products and Services Specification

**3.1** The Contractor shall provide a quote to the Customer, which will specify the Goods to be supplied and the services to be performed ("Work") and an estimate of the Contractor's charge for the performance of the Work ("Quote"). For supply and install contracts, the Contractor shall request a deposit from the Customer, as specified in the Quote.

**3.2** For supply only contracts (no install) payment in full is required when the Quote is accepted.

**3.3** The Quote shall be subject to final measurements and further on-site consultations. The Client will be informed of any amendments/variations to the Quote as soon as reasonably practicable. The Contractor reserves the right to vary the final amount for the Work.

**3.4** The Customer shall accept the Quote by signing and returning a copy of the Quote or Work Authorisation Form by email (scan), or any other acceptable method of electronic communication and these methods will be accepted by the Contractor and binding upon the Customer ("Accepted Quote").

**3.5** The Contractor need not commence Work until the Accepted Quote has been returned by the Customer, and the required deposit or payment made to the Contractor.

**3.6** The commencement date for delivery of the Goods and completion of the Work is an estimate only. The commencement date shall not be of the essence in these Trading Conditions.

**3.7** If the Customer requires the commencement date to be changed, the Customer is to provide the Contractor with a minimum 24 hours' prior written notice, otherwise a 15% administration fee will be charged, in addition to the Quote.

**3.8** The Customer warrants that it has not relied on any representation by the Contractor other than as supplied in writing in the Quote.

**3.9** The Contractor shall not be liable for any losses caused, either directly or indirectly, by any delay of the Contractor in delivering the Goods and services to the Customer.

**3.10** All quotes are valid for 30 days from date of quote unless specified otherwise in writing by the Contractor. The Contractor reserves the right to amend the Quote for any reason, including changes in the price of raw materials, until acceptance in accordance with 3.5 above.

**3.11** Unless specified, the Quote does not include nor allow for any:

- structural support or preparatory works;
- scaffolding or lifting equipment;
- zoning certificates;
- building permits or certificates;
- council permits for any requirement, including but not limited to, footpath closures and works conducted outside of normal working hours;
- restoration and/or repair, as necessary, of any surrounding areas (including but not limited to architraves, wall coverings and wall painting).

## 4. Standards of Work and Product Guidelines

**4.1** All toughened glass has an allowable acceptable tolerance of between 1mm and 3mm. The Contractor will clean glass to a trade clean standard, not a commercially clean standard.

**4.2** Glass to glass silicone butt joints has an allowable tolerance of plus or minus 2mm (maximum permissible joint width 4mm).

**4.3** Glass panels exceeding 1200mm x 3000mm are subject to manufacturers capabilities.

**4.4** The Contractor may, in its discretion, change the product information data on any product and may use an equivalent generic product.

**4.5** All standard clear float glass contains a green hue, which may affect the colour appearance of the finished painted product.

**4.6** Low iron glass is produced with minimum iron content and is best suited for colour matching, however slight variations may still occur.

**4.7** Non-standard colours will be produced in sample form and the Customer may incur the cost for the production of such sample. Acceptance of the colour sample is required prior to order acceptance. Colours produced on glass samples are representatives only.

**4.8** As per AS4667 Quality Requirements for Cut To Size and Processed Glass, Section 18.3 - Glazing within the first 12 months from completion of the Work any scratches, fractures, chips or other blemishes on glazing and mirrors are defects if they are caused by the Contractor and can be seen from a normal viewing position. Glass shall be inspected in a vertical position at an angle perpendicular (90 degrees) to the surface under natural day lighting conditions, the glass shall not be in direct sunlight during the inspection. Imperfections such as scratches, scars and rubs shall not be visible from a distance of 3 metres and the maximum allowable imperfections shall be in accordance with the Standard.

**4.9** All background lighting affects the appearance of painted glass.

**4.10** Any visual defect in glass must be reported to the Contractor within 48 hours of installation.

**4.11** Claims for losses that may be caused by NiS inclusion not accepted. NiS potential rupture of toughened glass is an acceptable risk and not a glass fault.

**4.12** Claims for losses that may be a result of a thermal breakage will not be accepted. Thermal breakage is an acceptable risk for all solar performance glass.

## 5. Variations

Variations to an Accepted Quote or contract may incur additional costs to the Customer.

## 6. Cancellation

The Customer shall reimburse the Contractor for any and all costs, expenses or losses incurred by the Contractor if the Customer cancels an Accepted Quote.

## 7. Customer Obligations

The Customer:

(a) shall provide the Contractor with all requested and necessary information and details, including but not limited to, measurements, plans, specifications and drawings;

(b) shall indemnify the Contractor for any extra cost, loss or damage for any variation in price caused by inaccurate information provided to the Contractor;

(c) shall indemnify the Contractor for the cost of Goods if the Contractor orders Goods based upon the inaccurate information and those Goods are not suitable for the Work;

(d) is responsible to obtain all necessary and required permits approvals and certificates at its own costs;

(e) shall advise the Contractor whether any Work is to be carried out on bush fire prone land, and if so, the bush fire attack level (BAL).

The Contractor shall not be responsible for any loss or damage suffered by the Customer as a result of the Customer's failure to disclose any such risk.

## 8. Delivery of Goods

**8.1** Where required delivery of the Goods shall be made to the Site, and the Customer shall make all necessary arrangements to take safe delivery.

The Customer may nominate a third party address for delivery of Goods, and in that case delivery to that third party is deemed delivery to the Customer for the purpose of this Agreement.

**8.2** The Contractor is deemed to have satisfied its delivery obligations upon delivering the Goods and obtaining from the person at the delivery address nominated by the Customer a receipt or a signed delivery docket. By signing a receipt or delivery docket the Customer warrants that the Goods were delivered undamaged, in proper quantities and in good and clean condition.

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**8.3** The failure of the Contractor to deliver the Goods shall not entitle the Customer to repudiate this Agreement. The Contractor shall not be liable for any loss or damage due to the failure to deliver the Goods, or part of them, promptly or at all.

**8.4** The Customer shall indemnify the Contractor for any costs, loss or damages incurred by the Contractor should access to the Site not be available and as a consequence the Contractor is unable to deliver the Goods, including but not limited to a re-schedule fee equal to 40% of the Quote.

## 9. Site Access

**9.1** The Customer must ensure that the Contractor has clear and unimpeded access to the Site until the Work has been completed and the Contractor paid in full.

**9.2** The Customer shall indemnify the Contractor for all additional costs, charges, penalties or other imposts if the completion of the Work is delayed due to the Contractor not having clear and unimpeded access to the Site.

**9.3** The Contractor will take reasonable care on the Site, but shall not hold any responsibility for any damage caused to any furniture and/or furnishings not removed by the Client prior to the Work being carried out, or to any surrounding wall/floor surfaces when removing existing frames (for example, render crack and damage to gyprock) or when installing Goods (for example, damage to tiles and/or pipework when drilling).

**9.4** If the Contractor is required to move items at the Site so that the Work can be completed, the Contractor reserves the right to charge the Client for the additional time in moving those items at a rate of \$150 (plus GST) per hour.

**9.5** Where required, the Customer must provide level hobs and waterproofing membrane, and any electrical supply wiring up of any building entry doors, electric strikes and automatic entry doors, prior to the Work being commenced.

## 10. Ability to Appoint Agents, Sub-contractors and Third Parties

The Contractor may contract, either in its own name as principal or agent for the Customer, with any agent, sub-contractor or third party for the provision of the Work pursuant to or ancillary to these Trading Conditions. Any such contract may be made upon the terms of contract used by the agent, sub-contractor or third party with whom the Contractor may contract and may be made upon the terms and subject to the conditions of any special contract which the agent, sub-contractor or third party may in any particular case require, including in every case that the agent, sub-contractor or third party may employ any person, firm or company for provision of the Goods or performance of the services.

## 11. Risk

The risk in the Goods shall pass to the Customer upon the earlier of delivery to the Customer, or to a third party nominated by the Customer, and/or installation of the Goods at the Site.

## 12. Payment

**12.1** The Customer must pay the Contractor the total amount set out in the Contractor's invoice

and within the time stated on the Contractor's invoice, quotation or any other order forms. If no time is stated then payment is due seven (7) days following invoice date.

**12.2** The Customer acknowledges and agrees that any Quote and invoice issued to it under this Agreement in respect of the Work is a claim made under the Building and Construction Security of Payments Act 1999 (NSW).

**12.3** The Contractor may charge interest to the Customer at the rate of two percent (2%) per annum above the commercial lending rate of the Contractor's bank or financial institution. Interest will be calculated on a daily basis on outstanding amounts.

**12.4** When agreed progress payments are not paid by the Customer, the Contractor may cease any further work until such time as the outstanding amount is paid.

**12.5** The Customer shall pay to the Contractor all costs, expenses or losses incurred as a result of the Customer's failure to pay all sums outstanding by the due date for payment. Without limiting the generality of the foregoing these costs include any costs incurred by the Contractor in collecting the debt using the services of a third party debt collection agency or solicitor, and any subsequent legal costs incurred in taking legal proceedings and enforcing judgment on a solicitor/client basis.

**12.6** Any glazing/compliance certificate for the Work is not issued to the Customer until final payment is made to the Contractor.

## 13. Contractor's Indemnity

**13.1** The Customer, or the Customer's nominated representative, shall remain on site during the performance of the Work.

**13.2** At the conclusion of the Work, the Customer shall sign an acknowledgement that the work has been completed by the Contractor in accordance with the Work.

**13.3** If the Customer does not comply with clauses 13.1 or 13.2 the Customer shall indemnify the Contractor from any claims or charges relating to damage and or loss of property from the site.

## 14. Retention of Title

**14.1** Title in any and all Goods shall remain with the Contractor until the Customer has paid in full all monies owing pursuant to any invoice issued by the Contractor, including all GST, notwithstanding the delivery or installation of the Goods. If the Customer has on sold the Goods, the Customer will hold the proceeds of such sale upon trust for the Contractor and shall account to the Contractor for these funds.

**14.2** If payment by the Customer is later avoided by law, then that payment shall be deemed to have not discharged the Contractor's title in the Goods nor the Customer's indebtedness to the Contractor.

**14.3** Until such time that payment has been made in full the Customer is in possession of the Goods solely as Bailee, and during that time the Customer must not encumber or otherwise charge the Goods, the Customer must ensure the Site is secured and adequately protected against theft or vandalism, and the Customer is liable to the Contractor for any loss or damage however caused to the Goods following delivery and or installation of the Goods.

**14.4** Until such time that title in the Goods passes to the Customer, the Contractor may remove or

repossess any Goods from the Customer including, but not limited to, dismantling the installation of the Goods and sell or dispose of the Goods. The proceeds of any sale shall be applied towards the Customer's indebtedness to the Contractor. The Contractor shall not be liable to the Customer or to any person or entity claiming through or on behalf of the Customer.

## 15. Lien and Stoppage in Transit

The Contractor, its servants or agents shall have a special and general lien on the Goods and a right to sell the Goods whether by public or private sale or auction without notice to recover all monies dues under this contract. In addition, the lien shall cover the costs and expenses of exercising the lien including without limitation, the costs of sale and reasonable legal fees.

## 16. Personal Properties Securities Act 2009 ("PPSA")

**16.1** Throughout this clause the following words have the same meanings as contained in the PPSA; Financing Change Statement, Financing Statement, Proceeds, Register, Security Agreement, Security Interest, and Verification Statement.

**16.2** These terms and Conditions create a Security Agreement that creates a Security Interest in all Goods and Proceeds supplied to the Customer or to be supplied in the future, together with all of the Customer's present and after-acquired property and any proceeds, until the Contractor is paid in full under this Agreement.

**16.3** The Security Interest is a continuing Security Interest in all Goods and Proceeds which will operate until the Contractor signs a release.

**16.4** The Customer waives its rights pertaining to the sections listed in sub-section 115(1) of the PPSA which will not apply to the Security Agreement as created by these Terms and Conditions.

**16.5** The Customer will keep all Goods free of any charge, lien or Security Interest (except as required under these Terms and Conditions) and shall not deal with the Goods in a way that may prejudice any rights that the Contractor has

under these Terms and Conditions or the PPSA, nor will the Customer, without the prior written consent of the Contractor, assign, transfer or grant any Security Interest over its right, title and interest in or to the Agreement to any person (or agree or purport to do so). The Contractor may, without the prior written consent of the Customer, assign, transfer or grant any Security Interest over its right, title and interest in or to the Agreement to any person (or agree or purport to do so).

**16.6** The Customer will sign any further documents and provide further information so that the Contractor may register a Financing Statement, Financing Change Statement, or any other document required to be registered by the PPSA.

**16.7** The Customer will indemnify the Contractor for all fees and costs, including legal fees, incurred by the Contractor in registering any Financing Statement or Financing Change Statement on the Register, and in enforcing the Security Interest.

**16.8** The Customer shall not register a Financing Statement or Financing Change Statement over the Goods or Proceeds in favour of a third party without the prior written consent of the Contractor.

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## 17. Warranty

**17.1** Any warranty on the Goods is limited to the written warranty provided by the manufacturer of the Goods on or before installation of the Goods. Any warranty may be null and voided if the Goods are modified, damaged or altered by the Customer in a manner the Goods were not designed to perform. Warranty will not be provided by the Contractor on any Goods supplied by the Customer to be used in the Work. The Contractor shall not be liable for any loss or damage as a result of any delay in replacing or repairing the workmanship or Goods.

**17.2** Any additional warranties to be provided by the Contractor for the Work will be as contained in a document entitled "Standard Installation and Product Warranty", if so provided by the Contractor with the Quote.

**17.3** Nothing in any of the warranties provided by the Contractor are intended to limit or exclude the Customer's statutory rights.

## 18. Liability/ Australian Consumer Law

**18.1** Under the Australian Consumer Law various conditions and warranties may be implied into these Terms and Conditions. There are also rights and remedies conferred on the Customer which cannot be excluded, restricted or modified by the Agreement ("Non-excludable Rights"). Other than any Non-excludable Rights, the Contractor disclaims all conditions and warranties, express or implied, and all rights and remedies conferred on the Customer by statute, common law, equity or otherwise.

**18.2** To the extent permitted by law, the liability of the Contractor for a breach of a Non-excludable Right is limited to either supplying the Goods and services again, or the payment of the cost of having the Work supplied again, at the Contractor's option.

**18.3** The Contractor's liability is reduced to the extent that the Customer contributed to any loss or Claim.

**18.4** The Contractor will not be liable to the Customer for any loss or damage caused by the Contractor's failure to deliver the Goods or provide the services, as a result of earthquake, fire, flood, riot, civil disturbance, theft, crime, strike, lockout, war, the inability of the Contractor's supplier to supply the required material, epidemic, pandemic or any other circumstance beyond the Contractor's control.

## 19. Privacy

**19.1** The Customer authorises the Contractor to collect, retain, record, use and disclose commercial information about the Customer, in accordance with the Privacy Act 1988 (Cth), for the following purposes;

- Provision of Goods and services
- Verifying and checking the Customer's credit
- Processing of payment instructions, direct debit or credit facilities.

**19.2** The Contractor may provide commercial information about the Customer, in accordance with the Privacy Act 1988 (Cth), to obtain a consumer credit report about the Customer.

**19.3** The Contractor reserves the right to use pictures taken at the Site for use in marketing or advertising material.

## 20. Security, Caveat and Charge

The Customer charges all equitable and legal property, present or future, of the Customer in respect of any and all monies that might be owing by the Customer to the Contractor, and hereby authorises the Contractor or its solicitors to execute any consent form as its attorney for the purposes of registering a caveat over any real property owned by the Customer.

## 21. Client Representations and Warranties

**21.1** The Customer warrants to the Contractor that:

- the Customer is not subject to any actual, threatened or pending investigation, action, suit or proceedings by or before any authority;
- the Customer is solvent;
- in the case of an entity – a liquidator, administrator and/or receiver etc has not been appointed to the Customer;
- in the case of an individual – a bankruptcy notice has not been issued to the Customer;
- any information provided by the Customer to the Contractor prior to this Agreement and at the date of this Agreement is true and correct.

**21.2** The Customer will provide immediate written notice to the Contractor if the Customer becomes aware that a representation or warranty given by the Customer under this clause has become untrue or misleading.

**21.3** The Customer acknowledges that the Contractor has entered into this Agreement with the Customer in reliance on the representations and warranties set out in this clause.

## 22. Suspension and Termination

Without prejudice to any other right or remedy available to the Contractor, if the Contractor considers that the Customer has breached this Agreement, the Contractor may immediately and without notice, suspend or terminate the provision of the Work and recover any outstanding balance owed to the Contractor.

## 23. Dispute Resolution

**23.1** A party claiming that a dispute has arisen out of or in relation to this Agreement must give written notice to the other party specifying the nature of the dispute ("Dispute Notice").

**23.2** Upon receipt of the Dispute Notice, the parties must within 14 days seek to resolve the dispute.

**23.3** Notwithstanding either party's rights that may exist under the Building and Construction Industry Security of Payment Act 1999, and if the dispute is not resolved within 14 days of the receipt of the Dispute Notice, either party may refer any dispute under, or arising out of, this contract to the Institute of Arbitrators & Mediators Australia, for resolution by conciliation and/or arbitration under the Rules of the Construction Industry Dispute Resolution Scheme.

## 24. No Waiver

A right or power is not waived solely because the party entitled to exercise that right or power does not do so. Moreover a single exercise of a right or power will not preclude any other or further exercise of that right or power, or of any other right or power. A right or power may be waived only in writing, signed by the party to be bound by the waiver.

## 25. Entire agreement

This Agreement constitutes the entire understanding between the parties and supersedes all prior agreements, understandings and communications, whether written or oral.

## 26. Severability

Any provision in these Trading Conditions which is invalid or unenforceable must be read down if possible, so as to be valid and enforceable. If the provision cannot be read down then it is capable of being severed to the extent of the invalidity or unenforceability without affecting the remaining provisions of these Trading Conditions.

## 27. Governing law and Jurisdiction

These Trading Conditions are governed by the law in force in New South Wales and the parties submit to the non-exclusive jurisdiction of the Courts of New South Wales.