

FLAT GLASS INDUSTRIES PTY LTD STANDARD TERMS AND CONDITIONS OF TRADE

1 We, Us, Seller and similar expressions, refer to Flat Glass Pty Ltd (ACN 003 539 731), and where applicable its Related Bodies Corporate (as defined in the Corporations Act 2001). **You, Buyer** and similar expressions, refer to you, our proposed customer. The details specified on the front of this form apply.

2 Our conditions always apply. In return for us agreeing to consider your order you agree that these terms and conditions apply if we do accept your order or if we do supply you with goods or services (whether for cash, or on credit).

3 Not obliged to accept orders. We are not obliged to accept any orders from you, but if you do place an order with us then it becomes binding from the moment that we accept it even if we do not tell you that it has been accepted. Any quotation is merely an invitation to you to place an order with us. If you offer to purchase goods based on a quotation from us, then your offer is subject to these conditions.

4 Our conditions overrule any other form. These terms and conditions prevail even if they are inconsistent with anything in any earlier or later order form or similar document.

PAYMENTS AND CREDITS

5 Time for payment. Unless we agree in writing to give you credit, if you offer to purchase goods, payment in full must be made prior to commencement of production of your order.

6 Withdrawal of future credit. At our discretion, we may decline to give you further credit at any time. If we do decline to give you further credit then that decision does not affect the credit terms which apply to any amounts you then owe to us. Where goods are supplied to you on credit you irrevocably authorise us, our employees and agents to make such enquiries as we deem necessary to investigate the credit worthiness of you from time to time including the making of enquiries of persons nominated as trade referees, credit reporting agencies, the bankers of you or any other credit providers (the "Information Sources") and you hereby authorise the Information Sources to disclose to us such information concerning you which is within their possession and which is requested by us.

7 Overdue payments. If any amount you owe to us is not paid within 7 days of the due date then all of the monies that you owe us on any account becomes immediately due and payable; and without limiting our other rights we may suspend the supply of service and defer or cancel any outstanding orders. If you do not pay an invoice by the due date, a late payment fee of 2% above the prime overdraft rate charged from time to time by the National Australia Bank calculated and payable daily may be imposed. In addition, without limiting any right contained below, you will be liable to indemnify us for all expenses incurred by us in recovering any amounts which you fail to pay by the due date (including any commission payable to any commercial or mercantile agents and legal costs), and we may at our discretion report your default to any credit reporting agencies. You agree that time for payment for the goods is of the essence. You acknowledge that where any one or more inter-related accounts fail to comply with these terms and conditions then all inter-related accounts shall be subject to suspension of supply and account cancellation procedures and invoices rendered to all inter-related accounts shall become immediately due and payable. For the purpose of this clause, "Inter-related account" means an account of which either:

- a) The relevant Buyer or guarantor(s) are the one and the same as those of another account held with the Seller, or
- b) Is an account of which:
 - i. The Buyer or its guarantor(s) are a related entity of a second Buyer holding an account with the Seller, or
 - ii. The relevant second Buyer's guarantor(s) are a "related entity" (as defined in the Corporations Act 2001) to the relevant first Buyer or its guarantor(s).

8 Prices and price variations. We may increase any agreed sale price after we accept an order, to cover the full amount of any increases in indirect taxes and duties such as sales taxes, GST, consumption taxes and stamp duty which we incur in connection with a transaction after the date of your order. We may also impose a charge for accepting payments by credit card. We may set off against any credit owed to you any amount owing by you to us. We may require you to make a deposit before accepting an order.

WARRANTIES AND LIMITATIONS

9 Our warranty. We may repair or replace any new item sold by us if there is any manufacturing defect in material or workmanship in respect of the goods, provided that you comply with your obligations under clause 18 regarding the return of goods. You acknowledge that we may choose whether to repair or replace, and that is the limit of our liability under this warranty. **Important Exclusions:** This warranty does not cover: anything not specifically listed in the "Our Warranty" section of this Warranty; in transit damage; failure to comply with the original supplier or manufacturer warranty; willful abuse or misuse; general wear and tear. Except as listed in the "Our Warranty" section of this Warranty this warranty does not cover any products sold 'as is' or used in breach of manufacturer warranty, any damage from cleaning or repair by anyone without written authorisation from us, any damage caused by products not used according to product instructions, consequential damage or incidental damages, personal injury, lost profits, lost savings or other economic damages, loss of use of the goods, rental or hire use, damage from prolonged exposure to fire or heat, damage from fraud, intentional acts, war, hostilities, terrorism or vandalism or acts of god.

10 Sale by specification. We sell our products by specification. You decide what purpose to use them for or to re-supply them for.

11 Unexpected delay. This clause applies if something happens which is beyond our reasonable control which makes it impossible, more difficult or more expensive for us to perform our obligations in our usual way. In those cases we may wait until it is again possible for us to perform our obligations in our usual way without additional difficulty or expense and we are not liable for any delay which results. If delay or failure to deliver is caused by force majeure or labour dispute we may suspend delivery, supply or completion and/or terminate the contract. Force Majeure means an

act of God, war, lightning, fire, earthquake, storm, flood explosion, unavailability or delay in availability of equipment materials or transport, and any other cause whether of the kind specifically enumerated or otherwise which is not within our control. Whilst we shall use reasonable endeavours to comply with your particular delivery requirements and order specifications, you will not be entitled to cancel the whole or part of an order or to claim compensation by reason of our failure to comply with your delivery requirements or minor variations to the goods as a result of changes to the manufacturing processes or specifications.

12 Delivery. Delivery is when the goods are collected or dispatched from our premises. Delivery times are estimates only and we are not liable for minor delays in delivery. In this respect you agree that time is not of the essence. If you fail to take delivery of, accept or collect the goods, we may charge you a reasonable fee for storage and re-delivery. You shall make all arrangements necessary to take delivery of the goods whenever they are tendered for delivery. The failure of you to accept delivery of, or collect, any completed order within seven days of order completion, and/or notification by us of order completion, will entitle us to invoice the completed order (pre-invoice order) on the last working day of the month of order completion. Payment for these orders will be sought in line with the provisions in these terms and conditions.

Delivery of the goods to a third party nominated by you, in writing, is deemed to be delivery to you for the purposes of these terms and conditions.

We may deliver the goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions in these terms and conditions.

13 Exclusion of implied conditions. The law implies various terms, conditions and warranties which might apply to us supplying goods or services to you. We exclude all of those implied terms, conditions and warranties to the fullest extent permitted by law.

14 Competition and Consumer Act etc. limits. Provisions of the Competition and Consumer Act 2010 and other statutes in some cases either cannot be excluded, restricted or modified; or can only be restricted or modified to a limited extent. If any provisions of those types do apply, then to the extent permitted by law our liability under those provisions is limited as follows: Our liability in relation to goods is limited at our option to replacement of the goods or the supply of equivalent goods; or repair of the goods; or payment of the cost of replacing the goods or of acquiring equivalent goods; or payment of the cost of having the goods repaired. Our liability in relation to services is limited at our option to the supplying of the services again; or the payment of the cost of having the services supplied again.

15 Other damages claims excluded. We are not liable for any damage for breach or negligence or otherwise, except as stated. **Damage** includes lost profits, lost savings, lost time, loss of or damage to goodwill, loss of or damage to data or records, and claims made against you by others. Subject to the other provisions of this clause, we are not liable for any consequential, indirect or special loss or damage, loss of profits, loss of business, business interruption, costs or amounts that you are liable for arising out of any loss suffered by any person under or relating to these terms and conditions, whether in contract, tort (including without limitation negligence), in equity, under statute, under an indemnity, or on any other basis, whether or not such loss or damage was foreseeable and even if advised of the possibility of the loss or damage. To the fullest extent permitted by law, our aggregate and cumulative liability towards you under any agreement shall not exceed the value of goods we supplied.

16 Indemnity. You must indemnify us against all liability, claims, damage, loss, costs and expenses (including, without limitation, legal fees, costs and disbursements on a full indemnity basis) due to your breach of any of these terms and conditions, whether incurred against or by us in respect of:

- i) personal injury;
- ii) damage to tangible property; or
- iii) a claim by a third party.

OWNERSHIP

17 Ownership passes to you on payment. We remain the owner of all of the goods covered by an order until you have paid the full price for those goods plus any associated charges. Payments by cheque do not count until we receive payment on the cheque. Until you become the owner of particular goods, we may enter into any premises or vehicle if we have reasonable grounds to expect that we may find any part of the goods there. If you default in paying any part of the price or associated charges in connection with an order we may re-take possession of the goods supplied under the order. That applies even if we hold some negotiable instrument or security for the amount unpaid. You acknowledge that at all times until full payment is received, we retain title (even if you go into liquidation or become bankrupt) and in no circumstances will the goods be deemed fixtures. If you resell any of the goods (even if mixed with other goods) before becoming the owner, you are acting as our selling agent and shall act as bailee although only to the absolute minimum extent necessary to protect our ownership. If the goods are sold in the ordinary course of business then you will hold the proceeds of sale on trust for us. Should we seek to recover the goods you hereby grant to us a license to enter onto your premises to facilitate recovery of the goods and indemnify us for any damage which has been caused to the goods. Risk with respect to the goods (including any loss, damage or deterioration) shall pass to you immediately when the goods leave our premises.

If any of the goods are damaged or destroyed following delivery but prior to ownership passing to you, we are entitled to receive all insurance payable for the goods. You acknowledge that the production of these terms and conditions by us is sufficient evidence of our rights to receive the insurance proceeds without the need for any person dealing with us to make further enquiries.

The Buyer hereby grants a charge to the Seller over all of its present and after acquired property ("APAAP") as security for its indebtedness and obligations under these terms

and conditions. The Buyer agrees that the covenant to repay contained in these terms and conditions is a charge of any such interest in real property of the Buyer and consents to a caveat being lodged against the title to any such real property or any interest in such real property owned by the Buyer, including that where the Buyer/s is/are or becomes a trustee of a trust (whether or not such trust is disclosed herein), the Buyer in such capacity hereby charges all such real and personal property of such trust (including all present and after acquired property) with the obligations herein and declare that such charge is given in consideration of the terms herein, of the Seller agreeing to sell or continue to sell to the Buyer and at the request of and for the benefit of such trust.

18 Returned Goods No goods may be returned to us without our prior written approval and then only upon such terms as we may require which may include inspection, re-packaging and transport costs. You must inspect the goods immediately upon delivery and must within 7 days after the date of delivery give written notice to us of any alleged defect, shortage in quantity, damage or failure to comply with the description in the order. In particular, you must:

- (i) provide us with the invoice number of the order of the goods;
- (ii) return the goods with a claim form listing a description of any alleged defects/shortage in quantity/damage/failure to comply with the description in the goods; and
- (iii) obtain a return authorisation number from us.

If you fail to give that notice, then to the extent permitted by law the goods must be treated as having been accepted by you and the Customer must pay for the goods in accordance with the provisions of these terms and conditions.

Where you have returned goods in accordance with this clause and we agree that the goods are defective and/or that you are entitled to return the goods, our liability is limited to either (at the our discretion) replacing or repairing, at our discretion, upon receiving the goods.

Unauthorised or unacceptable returns may be returned to you at your expense.

19 PPSR. You acknowledge that we have a security interest in the goods for the purposes of the Personal Property Securities Act (Cth) (PPSA) and to the extent applicable the PPS Act applies. To give effect to the above, you consent to us affecting a registration on the Personal Properties Securities Register (PPSR) (in any manner we consider appropriate) in relation to any security interest arising under or in connection with these terms and conditions and you agree to provide all assistance reasonably required to facilitate this. You also undertake to do all such things, including executing any new document or providing any information that is required by us so that we acquire and maintain a perfected security interest under the PPSA in respect of the goods and its proceeds, so that we may register a financing statement or financing change statement and to ensure that our security position, and rights and obligations, are not adversely affected by the PPSA. You agree that you shall have no rights under sections 95, 118, 121(4), 125, 130, 132(3)(d), 132(4), 135 142 and 143 of the PPSA, and the application of Part 4.3 (other than sections 123, 124, 126, 128, 129(1), 133, 134(1) and 136) of the PPSA is contracted out of if that Part would apply by virtue of section 116(2) of the PPSA;

You waive your right to receive notice of a verification statement under section 157 of the PPSA.

20 IP. You acknowledge agree that, unless and to the extent expressly agreed by us to the contrary:

- (i) all Intellectual Property in any goods is owned absolutely by us and vests in us immediately on creation; and
- (ii) to the extent that you may at any time acquire any right, title or interest in any Intellectual Property in goods, you, by these terms and conditions, assign to us all such rights, title and interest in that Intellectual Property.

We will grant you a limited, non-exclusive and non-transferable licence under our Intellectual Property to use the goods for the purpose for which they are supplied under a purchase order provided that you have fully complied with these terms and conditions, and subject to any restrictions specified by us at our discretion from time to time.

You warrant that all designs or instructions to us will not cause us to infringe any person's Intellectual Property including any patent, registered design or trademark in the execution of your order and you agree to indemnify us against any claims or action taken by any person against us in respect of any such infringement.

For the purpose of these terms and conditions, "**Intellectual Property**" means all present and future rights conferred by statute, common law or equity in or in relation to any copyright, trademarks, designs, patents, circuit layouts, plant varieties, business and domain names, inventions, confidential information, and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields, whether or not registrable, registered or patentable.

21 Lien. You hereby irrevocably grant us a general and specific lien and pledge over any and all goods belonging to you which are in our possession from time to time to secure payment of any amounts due and payable under these terms.

22 Cancellation of orders. You must not cancel an order unless expressly agreed by us. You acknowledge that special make-up orders (ie, orders for products made specifically for you) and custom product orders must not be cancelled in any circumstances. In the event that we accept the cancellation of an order we shall be entitled to charge any reasonable fees for the cost of work and materials and any administration costs incurred by us in preparing and managing the order.

23 Change of control. You shall give written notice to us within seven (7) days of any Change of Control to you. You hereby agree to indemnify and keep indemnified us against any loss, damage, cost or expense incurred by us as a result of your failure to notify us of any such change of ownership and/or control. We reserve the right to vary any order, hold or discount entitlements upon any Change of Control of you.

For the purpose of this clause, "**Control**" has the meaning given in section 50AA of the Corporations Act except that in addition an entity controls a second entity if:

- (a) the first entity would be taken to control the second entity but for subsection 50AA(4); or
 - (b) the first entity has voting power (as defined in section 610 of the Corporations Act) of at least 50% in the second entity.
- A Change of Control occurs in relation to a body corporate or entity (the "body") where:(i) an entity that Controls the body ceases to Control the body; or (ii) an entity that does not Control the body comes to Control the body.

GENERAL CONDITIONS

24 Variations in specifications. We reserve the right to vary the specifications or performance criteria of any product from time to time and to obtain products from different sources, at our absolute discretion. We may do that without telling you provided we have reasonable grounds for believing that the alternative product offered is substantially similar to that previously offered or represents an improvement.

25 Certificate of debt. You are bound by any certificate signed by any of our directors or solicitors which shows any amount or calculation relevant to what you owe us. The only exception is where you can prove the certificate is wrong.

26 Finance company arrangements (if any). If you wish to lease or finance the purchase of goods from us through a financier then these terms and conditions still apply (with only the minimum changes necessary) between you and us. These terms and conditions still regulate our rights, obligations and liabilities both to you and to the financier and you must indemnify (protect) us against any claim in connection with this order or those goods by the financier.

27 Variation. We reserve the right to vary all or any of these terms and conditions upon thirty (30) days notice to you. Clerical errors are subject to correction without notice.

28 Applicable law. These terms and conditions are governed by the law of New South Wales. The application of the Sale of Goods (Vienna Convention) Act 1986 (NSW) is excluded. These terms and conditions are the entire agreement and understanding between you and us on everything connected with the subject matter of these terms and conditions, and supersede any prior agreement or understanding on anything connected with that subject matter.

If any provision of these terms and conditions is found to be invalid or unenforceable then it is deemed to be severed and the remainder of these terms and conditions shall remain valid and in force.

29 GST. Despite anything else in these terms and conditions to the contrary, to the extent that we are liable to pay GST in connection with any taxable supply pursuant to these terms and conditions (*the affected supplies*) -

- We may add to each of the amounts payable by you for the affected supplies, an allowance in respect of GST as reasonably calculated by us (for past, present or future GST liabilities) and you must pay us the higher amount which results
- We may make a further charge after termination, being a further allowance in respect of any remaining GST as reasonably calculated by us, and you must also pay us that charge
- Any amount payable under these terms and conditions, including an amount payable because of the previous provisions, remains payable whether or not there is disclosure of any amount included on account of GST
- We must comply on demand with our obligations in relation to the issue of any relevant tax invoice to you.

Anything we might have said to you about GST in connection with these terms and conditions was only intended to reflect our current understanding and may not have been applicable in your particular circumstances. We recommend that you obtain and only rely on your own independent expert advice in relation to GST in particular. *GST, tax invoice and taxable supply* in these terms and conditions have the meanings defined in A New Tax System (Goods and Services Tax) Act 1999 as may be amended or substituted from time to time. If those definitions are repealed, then those words have the meanings defined for such comparable terms as we may reasonably identify in any comparable legislation.

30 Confidentiality.

You acknowledge that all pricing information provided by us and any other commercially sensitive or confidential information relating to an order is strictly confidential (**Confidential Information**). Confidential Information does not include information that:

- a) is in or enters the public domain through no fault of the receiving party or any of its officers, employees or agents;
- b) is or was made available to the receiving party by a person (other than the disclosing party) who is not or was not then under an obligation of confidence to the disclosing party in relation to that information; or
- c) is or was developed by the receiving party independently of the disclosing party and any of its officers, employees or agents.

Except as stated in these terms and conditions or where required by law, you are under an obligation to not and must not permit any of your officers, employees, agents, contractors or related bodies corporate to disclose any Confidential Information to any person, other than your professional advisors or as required by law, without the prior written consent of us. You acknowledge that damage may not be an adequate relief if this clause is breached, and we may seek urgent injunctive, interlocutory or declaratory relief from a court. This clause continues despite the termination of these terms and conditions.