

1 General

These terms and conditions ("Terms") plus any implied terms which cannot be excluded are the whole agreement between the applicant named in the Credit Application (or the owner of the business name if the named applicant is a business name) ('Customer or you/your') and Australian Glass Group (Holdings) Pty Ltd ACN 603 493 901 and their subsidiaries, divisions, affiliates, related and associated companies, trusts and other entities, servants, agents, and/or any successors and/or assigns ('we/us/our'). No other contractual terms of a Customer (such as on a purchase order or otherwise) apply and, if provided, they don't constitute a counteroffer. After you have received a copy of these Terms, if you place an order for the supply of all or a portion of goods and/or services supplied under these Terms ('Goods/Services'), you will be deemed to have accepted these Terms and they will apply to the exclusion of all other terms, unless agreed in writing otherwise. We reserve the right to refuse to provide the Goods or Services in our sole discretion.

2 Credit Terms

2.1 All invoices are due to be paid to us within 30 days after the end of the month that the invoices were issued to you without deduction, or deferment on account of any claim, counterclaim or set off.

2.2 If we don't receive payment on the due date, we may:

2.2.1 Charge interest (as liquidated damages) at the rate of two percent (2%) above the rate of interest fixed from time to time under Section 2 of the Penalty Interest Rates Act 1983; and

2.2.2 Suspend or discontinue supply of the Goods or Services to you.

2.3 If we don't receive payment within 45 days after the end of the month that the invoices were issued to you, we may place your account on hold or cancel your account with us without notice to you.

2.4 We may revoke our express or implied approval for giving you credit at any time.

2.5 We can set-off against any money owing to you amounts owed to us by you on any account whatsoever.

2.6 Any payments received from you on overdue accounts will be applied first to satisfy interest which may have accrued, second to reasonable expenses and legal costs, and then to principal, unless we determine otherwise.

2.7 You are liable for all reasonable expenses (including contingent expenses such as debt collection commission) and legal costs (on a full indemnity basis) incurred by us for enforcement of obligations and recovery of monies due from you to us.

2.8 All sums outstanding become immediately due and payable by you to us if you make default in paying any sums due to us, you become bankrupt or commit any act of bankruptcy, or have judgment entered against you in any court, notwithstanding the provisions of any other clause in these Terms.

3 Pricing and Placement of Orders

3.1 Prices charged will be by reference to our standard prices in effect at the date of the order. Subject to clause 23, we reserve the right to increase the prices, however, we will not change any prices for an existing order that has been accepted by us; the prices that apply to the order are the prices that applied at the time you placed the order. You are responsible for ensuring the accuracy of all specifications, details, sizes and quantities which form the basis of an order and otherwise in accordance with clause 23. We do not accept any responsibility for any errors in such specifications, details, sizes and quantities and shall fulfil the order in conformity with the information supplied by you.

3.2 No order will be binding on us until accepted by us in writing or by satisfying the order. Variation or cancellation or any order, dealing or arrangement must be agreed in writing by us.

3.3 If you make specific or custom orders, these may be rejected by us in our absolute discretion. If the specific order is accompanied by a non-refundable deposit of at least 50% of the total order price, we may accept your order in writing or by satisfying the order.

3.4 If you have a dispute concerning any order filled by us (including any dispute as to measurement, quality, quantity, identity or authority), our internal records will be conclusive evidence of what was ordered.

3.5 Each order placed shall be deemed to be a representation by the Customer at the time of the order, that it is solvent and able to pay all of its debts as and when they fall due.

3.6 When any order is placed, you must inform us of any material facts which would or might reasonably affect our commercial decision to accept the order and/or extend credit to you.

3.7 Documents requiring signature may be signed in electronic form and are binding from the time a person affixes a signature on your behalf.

3.8 Our standard prices don't include (unless specified): (1) any statutory tax, including any GST, duty or impost levied in respect of the Goods and not allowed for by us in calculating the price; or (2) costs and charges in relation to insurance, packing (other than our standard packing), crating, delivery (whether by road, rail, ship or air) and export of the Goods. If we are liable for GST on any Goods or Services supplied to you, you must pay to us an amount equal to the GST liability once you receive the tax invoice from us.

3.9 You shall pay any variations in the invoice or contract price as a consequence of currency fluctuations.

3.10 This agreement shall not be affected by any impositions or alterations of customs duties or by decisions of the Customs Department with regard to either classification or value of duty or landing charges. Any such impositions shall be payable by you.

4 Minimum Order Value

If an order is less than the minimum order value or minimum square meterage set out in our standard prices, we reserve the right either to not accept an order or to charge you the price corresponding to the minimum order value or minimum square meterage.

5 Delivery and Supply

5.1 We shall not be liable for failure to deliver/supply, or for delay in delivery/supply. If we quote a time for delivery/supply, it's an estimate only. We can stop supply/delivery if you fail to comply with these Terms.

5.2 We may refuse to supply any order in our absolute discretion (except where these Terms constitute a small business contract for the purposes of the Australian Consumer Law ('Small Business Contract')) and may make acceptance of an order conditional upon receiving a satisfactory credit assessment of the Customer.

5.3 If you tell us to deliver the Goods over different times or to different addresses from those specified in the Credit Application, then you: (1) shall be liable for any additional cost, charge and expense incurred by us in complying with your direction; (2) shall pay for the whole of the invoiced value of the Goods pursuant notwithstanding the staggered deliveries; and (3) such action shall be deemed to be delivery to you.

5.4 You are deemed to accept delivery of the Goods where they are either delivered to your premises or when we notify you that the Goods are available for collection.

5.5 If you are unable or fail to accept delivery of the Goods, we may deliver them to a place of storage nominated by you and, failing such nomination, to a place determined by us. Such action shall be deemed to be delivery to you. You shall be liable for all cost, charge and expense incurred by us on account of storage, detention, double cartage/delivery or similar causes.

5.6 Subject to clause 5.1, you agree that you will be obliged to and shall pay for the Goods on the due date notwithstanding that delivery is made after the agreed delivery date, and notwithstanding that the Goods may not yet be delivered.

6 Property

6.1 Until full payment has been made for all Goods, and any other sums in any way outstanding from you from time to time:

6.1.1 Title to the Goods shall not pass to you and you shall hold the Goods as bailee for us (returning the same to us on request).

The Goods shall nevertheless be at your risk from the time of delivery/supply and you must insure the Goods from the time of delivery/supply.

6.1.2 You are only authorised to sell the Goods (or any portion of them) to third parties as our fiduciary agent provided that there shall be no right to bind us to any liability to such third party by contract or otherwise. All payments (direct or indirect) received from such third parties by you for the Goods (or any portion of them) shall be held on trust for us pursuant to the fiduciary relationship, except where clause 7.7 applies.

6.1.3 If you incorporate or transform the Goods (or any portion of them) into any other goods or products produced by you (or a third party), then you must hold a proportion of any payment ('relevant proportion') received by you for such goods or

products on trust for us. You expressly acknowledge that the relevant proportion shall be equal to the dollar value of the Goods incorporated or transformed.

6.1.4 We are irrevocably authorised to enter any premises where the Goods are kept, and to use your name and to act on your behalf, if necessary, to recover possession of the Goods without liability for trespass or any resulting damage.

6.2 At all times, we retain the right of possession of any "A" frames, "L" frames, stillages, packing materials or containers ("Packaging Materials") used for delivery of the Goods. You agree to return all Packaging Materials at your cost if requested by us and to indemnify us in respect of any Packaging Materials not returned to us in good order and condition (as determined by us) within fourteen (14) days of delivery of the Goods.

6.3 In addition to any lien to which we may, by statute or otherwise, be entitled, we shall in the event of your insolvency, bankruptcy or winding up, be entitled to a general lien over all property or goods belonging to you in our possession (although all or some of such property or goods may have been paid) for the unpaid price of any Goods sold or delivered to you under this or any other contract.

7 Personal Property Security Interest

7.1 You grant a security interest in the Goods and the proceeds (calculated on a retail basis) (as defined in the Personal Property Securities Act 2009 ('PPSA')) to secure the obligation to pay the purchase price of the Goods and other of your obligations to us under this agreement (together the "Indebtedness"). You warrant that the Goods are not purchased for personal, domestic or household purposes.

7.2 Where the Goods and/or proceeds are not readily identifiable and/or traceable or their recoverable value (which is equal to the retail value of the Goods) is insufficient to pay the Indebtedness, the security interest shall also extend to all the goods present and after acquired by the Customer, of which the Goods form part, to the extent required to secure the Indebtedness.

7.3 You waive any right to receive notice in relation to any registration or amendment to a registration on the Personal Property Security Register ('PPSR'). At your own expense, you will provide all reasonable assistance and relevant information to enable us to register on the PPSR and generally to obtain, maintain, register and enforce the security interests created by this agreement.

7.4 Any payments received from you shall be deemed to be made and applied by us in the following order (unless we otherwise determine):

(1); to any obligations that are secured, but not by a purchase money security interest ('PMSI'), in the order in which those obligations were incurred (2) to obligations that are secured by a PMSI, in the order in which those obligations were incurred (3) to any obligation owed by you which is unsecured, in the order in which the obligations were incurred

7.5 Until you have paid all money owing to us, you must at all times ensure that (1) all Goods, while in your possession, can be readily identified and distinguished, and/or (2) all proceeds (in whatever form) that you receive from the sale of any of the Goods are readily identifiable and traceable.

7.6 In the event that payments are made to us by you in accordance with clause 7.5 and they are not readily identifiable and traceable, you warrant that the funds paid to us are in satisfaction of any security held by us over the proceeds of the sale of goods, including any security granted under the PPSA.

7.7 Subject to clause 6.1.2, if the Goods are held by you as inventory (as defined in the PPSA), then you may sell or lease the Goods in the ordinary course of business. Otherwise until you have paid all money owing to us you must not sell or grant a security interest in the Goods without our written consent.

7.8 To the extent permissible by law, you agree that the following provisions of the PPSA will not apply and you will have no rights under them: Section 95 (to the extent that it requires the secured party to give notices to the grantor); section 96; section 118 (to the extent that it allows a secured party to give notice to the grantor); section 121(4); section 125; section 130; section 132(3)(d); section 132(4); section 135; section 142; section 143.

7.9 Section 115(7) of the PPSA allows for the contracting out of provisions of the PPSA, the following provisions of the PPSA will not apply and the Customer will not have any rights under them: section 127; section 129(2),(3); section 130(1); section 132; section 134(2); section 135; section 136(3), (4) and (5) and section 137.

7.10 Unless otherwise agreed and to the extent permitted by the PPSA, the parties agree not to disclose any information of a kind referred to in section 275(1) of the PPSA to an interested person or any other person. You waive any right you may have, or but for this

clause may have had, under section 275(7)(c) of the PPSA to authorise the disclosure of the above information.

8 Availability of Stock

8.1 Any order that cannot be fulfilled on its receipt will automatically be back ordered and processed when stock becomes available unless it is your stated standard policy not to accept back orders or you specifically mark your order, "Do Not Back Order". Deliveries at any time are subject to availability of stock and we will not be liable for any charges due to product unavailability.

8.2 You agree to accept current Goods in substitution for any Goods ordered provided they are not materially different to those Goods ordered.

9 Materials

All materials supplied by you to us must be shipped by you to the factory or site nominated by us and in accordance with our instructions and at your cost and risk. Such materials will remain at your risk at all times.

10 Forward Orders or Partial Delivery

10.1 If you place forward orders or request partial or instalment delivery, you agree:

10.1.1 To pay for so much of any order as is from time to time delivered by us;

10.1.2 That no delay or failure to fulfil any part of the order will entitle you to cancel or vary any order or delay or reduce any payment.

11 Restrictions and Statutory Provisions

11.1 You acknowledge and accept that we sell our Goods only through persons who have been authorised by us to sell specific product categories at specific locations and who comply with our Terms and Conditions. Subject to the provisions of the Competition and Consumer Act 2010: (1) under no circumstances may you sell Goods through the Internet or the mail without prior written authorisation from us; (2) you are prohibited from selling Goods on the international market without our express written consent; and (3) we do not grant to you the exclusive right to sell our Goods. We reserve the right to authorise and/or supply additional retailers in any market area that it deems necessary to adequately cover the market.

11.2 The provisions of the Sale of Goods (Vienna Convention) Act 1987 (Vic) are excluded to the extent possible by law.

12 Freight

Subject to clause 3.8 and unless otherwise agreed, we will ship by the least expensive route and carrier to all points. If you choose a route with a higher charge than the route of our choice for shipment, we will charge the difference to you.

13 Returns, Cancellations and Claims

13.1 You shall not return any Goods to us without obtaining prior authorisation from us. Unauthorised returns will not be accepted.

No returns will be accepted unless a copy of the relevant invoice is enclosed with the returned Goods. A list of the Goods returned including product descriptions, quantity, date of return and the Customer's name and address must also be enclosed. All Goods must be returned in the original packaging and you shall be responsible for all damage incurred during return shipment.

13.2 Subject to clause 16, if we accept the return of any Goods that have been ordered, we may charge you a handling fee with freight costs and risk remaining your responsibility. If we accept return of any Goods, we will issue a credit note or refund only after Goods returned are either collected by our authorised representative or agent or returned to us as set out above.

13.3 Cancellation - We will not accept cancellations or partial cancellation of an order unless we have first consented in writing to such cancellation or partial cancellation and unless a cancellation charge has been paid which, as determined by us, will indemnify us against direct loss, without limitation. Cancellation will not be accepted on Goods that are not regular stock which are in the process of manufacture or ready for shipment.

13.4 Subject to clause 16, all complaints, claims, or notification of lost Goods, incomplete Goods, Goods damaged in transit or Goods that do not comply with your purchase order or any claim for loss or damage arising out of the Services must be submitted to us in writing within seven (7) business days of delivery of the Goods or supply of the Services. We may issue a refund or credit note in respect of the Goods or Services. Otherwise, you are deemed to have accepted the Goods and shall not refuse to pay for the Goods on the basis that they were lost, incomplete, damaged in transit, or do

not comply with your purchase order and it is deemed that the Services have been performed in accordance with this agreement.

14 Privacy Act 1988 ('Privacy Act')

14.1 To enable us to assess your application for credit, you authorise us:

(1) to obtain from a credit reporting agency/body a consumer or commercial credit report containing personal information about you and any guarantors; and (2) to obtain a report from a credit reporting agency/body and other information in relation to your commercial credit activities, and (3) to give to a credit reporting agency/body information including identity particulars and application details.

14.2 You authorise us to give to and obtain from any credit provider

named in the accompanying Credit Application and credit providers that may be named in a credit report issued by a credit reporting agency/body information about your credit arrangements. You understand that this information can include any information about your credit worthiness.

14.3 You understand that information can be used for the purposes of

assessing your application for credit, assisting you to avoid defaulting on your credit obligations, assessing your credit worthiness and notifying other credit providers and credit reporting agencies of a default by you under these Terms.

15 Notification

You must notify us in writing within seven (7) days of: (1) any alteration of your name or ownership; (2) the issue of any legal proceedings against you; (3) the appointment of any provisional liquidator, liquidator, receiver, receiver manager or administrator to you; and (4) any change in the ownership of your business name. You agree that you shall be liable to us for all Goods supplied to the new owner by us until notice of any such change is received.

16 Warranties

16.1 No warranties except those implied and that by law cannot be excluded are given by us in respect of Goods supplied. If you are a consumer for the purposes of the Australian Consumer Law ('Consumer'), our liability for a breach of a condition or warranty is limited to:

16.1.1 The repair of the Good(s) or resupply of the Services or the cost of repairing the Good(s) or resupplying the Services if we determine that there has been a minor fault; or

16.1.2 If it is not possible to repair the Good(s), or if we determine that there has been a major fault (which may include multiple minor faults), the replacement of the Good(s) or refund of the price paid for the Good(s), as determined by you; or

16.1.3 If a minor fault prevents the Good(s) from being used for their intended purpose within 30 days after purchase, the replacement of the Good(s) or refund of the price paid for the Good(s) as determined by you; or

16.1.4 Cancelling the agreement and granting a refund if there is a major fault with the Services.

16.2 If the Goods are returned in accordance with this clause 16, you are responsible for returning the Goods to our premises. If the Goods are confirmed to have a minor fault or major fault, you may recover reasonable postage or transportation costs from us and no handling fee is payable by you.

16.3 You acknowledge and warrant that you have relied on your own skill and judgment or, alternatively, on the skill and judgment of tradesmen and professional advisers retained by you to provide advice and assistance on the suitability of the Goods for specific purposes and procedures and, in this respect, you shall indemnify us from and against any suit, claim, demand or compensation which, but for these Terms, you may have had against us, except to the extent (and only to that extent) that we are prevented from relying on that acknowledgement, warranty or indemnity by the Australian Consumer Law if you are a Consumer or these Terms are deemed to be a Small Business Contract.

16.4 You warrant to us that you are purchasing Goods as the principal and not as an agent.

16.5 You indemnify us from any liability, loss, expense or demand for or in connection with any false, misleading, deceptive or statement made by you in respect of the Goods to any person.

16.6 You warrant that you will check the Goods for compliance with all applicable standards and regulatory bodies before use, on-sale or application, and warrant that you will only use, on-sell, or apply the Goods in accordance with these warranties, and with any

recommendations and directions from us or the manufacturer.

16.7 You undertake to indemnify us in respect of any liability or expense we may incur if you breach the warranties and undertakings contained in this clause 16

17 Limitation of Liability

17.1 To the extent permitted by law, we are not liable to you or any person claiming through you for any loss or damage to the Goods or consequential loss (including loss of profits, loss of market, loss of chance, loss of production, expenses incurred and reliance damages), howsoever caused (including but not limited to liability arising from negligence, breach of contract, whether fundamental or otherwise).

17.2 We will provide you with such assistance as may be necessary for you to bring claims on carriers of the Goods.

17.3 To the extent permitted by law, we are not liable to you or any person claiming through you for any loss or damage or consequential loss (including loss of profits, loss of market, loss of chance, loss of production, expenses incurred, and reliance damages) suffered by you as a result of our late performance of the contract or Services, breach of contract, repudiation of the contract, or failure to deliver or delay in delivering the Goods or Services for any reason whatsoever, howsoever caused (including but not limited to liability arising from negligence, breach of contract, whether fundamental or otherwise).

17.4 We are not liable to you or any person claiming through you for any loss or damage or consequential loss (including loss of profits, loss of market, loss of chance, loss of production, expenses incurred and reliance damages) whatsoever, howsoever caused (including but not limited to liability arising from negligence, breach of contract, whether fundamental or otherwise) that is caused by Goods:

17.4.1 processed or made to designs drawings specifications or measurements or with materials which are provided or approved (whether in part or fully) by you or on your behalf; or

17.4.2 utilised stored, handled or used incorrectly or inappropriately by you.

17.5 To the extent permitted by law, we shall be discharged from all liability whatsoever in connection with this agreement and these Terms, the Services and/or the Goods unless suit is brought and notice of such suit is given in writing to us within nine (9) months of the completion of the Services or delivery of the Goods or, in cases where the Services were not provided, or the Goods were not delivered, the date upon which the Services should have been completed, or the Goods should have been delivered, whichever is the earlier.

18 Subcontracting

18.1 You authorise us to subcontract to any person ("Subcontractor") on any terms the whole or any part of the Services or the supply,

manufacture, certification and sale of the Goods. The Subcontractor means any person, their servants or agents, who, pursuant to a contract or arrangement with any other person (whether or not it is us), provides or agrees to provide the Services or the Goods or any part of the Services or the Goods (including manufacture, production and certification), and includes subcontractors of the Subcontractor.

18.2 You undertake that, to the extent permitted by law, no claim or allegation shall be made, whether by the you or any other person who is or may subsequently be interested in the Services and/or the Goods, against any Subcontractor which imposes or attempts to impose upon such Subcontractor any liability whatsoever and howsoever arising (including but not limited to liability arising from negligence or breach of contract, whether fundamental or otherwise, or wilful act or default of the Supplier or others) in connection with the provision of the Services and/or the Goods; and

18.3 To the extent permitted by law every exemption, limitation, condition, liberty, defence and immunity of whatsoever nature applicable to us or to which we are entitled in accordance with these Terms shall also be applicable and shall extend to protect:

18.3.1 all Subcontractors;

18.3.2 every other person (other than us) by whom the Services, the Goods or any part of the Services or Goods are provided, their servants and agents; and

18.3.3 all persons who are or may be vicariously liable for the acts or omissions of any persons falling within clauses 18.3.1 and 18.3.2.

18.4 For the purpose of clauses 18.2 and 18.3, we are or we shall be deemed to be acting as agent or trustee on behalf of and for the benefit of such persons and each of them and all such persons and

each of them shall to this extent be or be deemed to be parties to this contract.

19 Termination

19.1 Unless these Terms are deemed to be a Small Business Contract, we may cancel this contract or cancel the sale, performance, supply or delivery of any Goods and/or Services at any time before the Goods and/or Services are delivered, supplied or performance is completed by giving written notice.

19.2 We may terminate this Agreement if you do any of the following, which is not remedied within 7 days of written notice given by us:

19.2.1 Committing a material breach of these Terms which includes but is not limited to the failure to make payment for our Goods or Services by the due date;

19.2.2 Becoming bankrupt, committing an act of bankruptcy or having judgment entered against you in any court.

20 Intellectual Property

20.1 All intellectual property rights (including all rights resulting from intellectual activity and includes copyright, inventions, patent rights, registered and unregistered trademarks, design rights, circuit layouts and all rights and interests of a like nature, including but not limited to methods and techniques, together with any documentation relating to such our rights and interests), including those developed during the supply of the Goods remain our sole property at all times.

20.2 If we terminate this agreement, we may immediately reclaim any material incorporating our intellectual property and you grant us an irrevocable licence to enter upon your premises to reclaim such material without incurring liability to you or any other person.

20.3 Specs – Any illustration, drawing or specification supplied by us (“Specs”) are drafts and approximates. Specs are to be treated at all times as confidential and not made use of without our prior written consent. Any tangible or intellectual property rights in Specs shall remain our property and may be reclaimed at any time.

21 Force Majeure

We shall be released from our obligations in the event of national emergency, war, prohibitive governmental regulation or if any other cause beyond the control of the parties renders provision of the Goods impossible, where all money due to us shall be paid immediately and, unless prohibited by law, we may elect to terminate the Agreement.

22 Equitable Charge

You as beneficial owner and/or registered proprietor now charge in favour of us all of your estate and interest in any real property (including but not limited to any applicable land owned by you or described as the Street Address in the Credit Application if applicable) (‘Land’) to secure payment of accounts rendered by us to you for the delivery and/or supply of the Goods including interest payable on these accounts and costs (including legal costs on a full indemnity basis) incurred by us and including the costs to prepare and lodge a Caveat against the Land and to remove the Caveat.

23 Variation

23.1 We may vary these Terms by providing written notice to you (by email, conventional mail or by posting the amended terms on our website).

23.2 If you are a Consumer, or this agreement is deemed to be a Small Business Contract, and you do not deem the variation acceptable, you may elect not to proceed with the purchase of the Goods ordered before the date of the variation but which are intended to be subject to the variation.

23.3 If you are not a Consumer and this agreement is not deemed to be a Small Business Contract, you agree that the variation applies from the date of receiving notice of the varied Terms.

24 Deviation

24.1 The Customer authorises any deviation from the usual manner in which the Services and Goods are provided which may our absolute discretion be deemed reasonable or necessary in the circumstances.

24.2 If you expressly or impliedly instruct us to use or we agree to use a particular method of providing the Services or the Goods, we will give priority to that method but whether we ultimately use that method remains at our sole discretion and you authorise us to provide the Services or the Goods by another method.

25 Failure to Act

Our failure to enforce or insist upon the timely performance of any term, condition, covenant or provision in these Terms, or our failure to exercise any right or remedy available under these Terms or at law, or our failure to insist upon timely payment of monies when due or to demand payment of any charges or fees which accrue or any extension of creditor forbearance under these Terms shall not constitute a waiver of any subsequent default or a waiver of our right to demand timely payment of future obligations or strict compliance with the Terms.

26 Legal Construction

26.1 These Terms shall be governed by and interpreted according to the laws of Victoria and the parties consent and submit to the jurisdiction of the Courts of Victoria.

26.2 Notwithstanding that any provision of the Terms may prove to be illegal or unenforceable pursuant to any statute or rule of law or for any other reason that provision is deemed omitted without affecting the legality of the remaining provisions and the remaining provisions of the Terms shall continue in full force and effect.