

## Terms and Conditions of Trade

To the fullest extent legally possible, all dealings between Commercial Glazing Pty Ltd ACN 007 215 241 ("CG") and any customer ("Customer") relating to any products or services are subject to the following Terms & Conditions of Trade ("these terms") unless otherwise agreed in writing.

1. **Payments** are to be made on or before delivery or supply of Products by CG unless the Customer is a Credit Account Customer. Credit Account Customers must pay the price for the Products in accordance with the terms of their approved Application for their Commercial Credit Account or otherwise within 30 days of Invoice Date (in each case without deduction or set off).
2. **Interest** is payable on overdue accounts at CG's discretion at the rate prescribed under the Penalty Interest Rates Act 1983 (Vic) plus an additional 3%. Interest will be calculated daily, capitalised monthly and is repayable on demand.
3. **Property:** **a)** Property in and ownership of the Products does not pass until payment is made in full of the Credit Account **b)** CG reserves the right to take possession & dispose of Products as it sees fit at anytime until full payment of the Credit Account is made to the CG. The Customer grants permission to CG to enter any property where any Product is kept in order to do so with such force as necessary **c)** Risk of loss and damage to the Products passes on to the customer upon the Products leaving CG's premises whether or not CG arranges delivery **d)** A document signed by an officer of CG identifying CG's Products & stating that monies are owing to CG shall be conclusive evidence of CG's title to the Products **e)** Upon sale or disposition of Products and prior to payment in full of the Credit Account, the Customer agrees to hold all proceeds of sale upon trust for CG in a separate bank account and agrees not to mix the proceeds with any other monies & will upon CG's request immediately account to CG on any matter relating to the proceeds of sale. **f)** Until the Customer makes full payment of the Credit Account, the Customer agrees **(i)** to hold all Products as fiduciary agent and bailee for CG & store them in a manner which shows CG as owner **(ii)** only to sell Products in its usual course of business. Sale on payment terms other than cash on delivery, at cost or less than cost is not a sale in the usual course for the purposes of this Agreement **h)** if the Customer uses or incorporates any Products in any production, process, manufacture or construction or combines them with anything to create a finished or combined new thing for disposition by the Customer then upon such disposition prior to payment in full of the Credit Account, the Customer holds the proceeds of any such disposition upon trust for CG until full payment of the Credit Account.
4. **Limitation of Liability:** **a)** CG warrants that the Products comply with the warranties included in any warranty document given to the Customer and any guarantees that apply compulsorily under the ACL. **b)** To the extent permitted by Law, all other guarantees, warranties, undertakings, or representations expressed or implied, whether arising by statute or otherwise, which are not given in these Conditions or any Warranty Document are expressly excluded. **c)** To the extent permitted by Law, CG will not be liable in any circumstances for any: **(i)** loss or damage to any property or person whatsoever resulting from the provision of the Products **(ii)** loss arising from delay in delivery or **(iii)** Consequential Loss.
5. **Returns:** **a)** Subject to paragraph 4 above, any Products which are accepted in writing by CG as defective may be returned and **i)** be replaced free of charge or **ii)** be the subject of a credit for the invoiced value. **b)** Replacement free of charge does not include labour, transport or material costs.
6. **Specific Orders.** CG does not take any responsibility for the suitability of any glass products measured by & ordered by the Customer. Customer specific orders may be rejected by CG at its absolute discretion.
7. **Placement of Orders:** **a)** if any dispute arises concerning any order (& including any measurement, quality, quantity, identity or authority or any telephone, facsimile, e-mail or computer generated order) the internal records of CG will be conclusive evidence of what was ordered **b)** each order placed shall be & be deemed to be a representation made by the Customer at the time that it is solvent & able to pay all of its debts as & when they fall due **c)** failure to pay in accordance with these Terms shall be & be deemed to be conclusive evidence that the Customer had no reasonable grounds for making the representation referred to in 7.b) & that the representations were unconscionable, misleading and deceptive **d)** when any order is placed, the Customer shall inform CG of any material facts which would or might reasonably affect the commercial decision by CG to accept the order &/or grant credit in relation to it.
8. **Storage:** **a)** No responsibility will be taken by CG for any glass or glazing products left at CG factories. **b)** Costs may be incurred if no reasonable attempt is made to pick up or arrange delivery of same **c)** Costs will be invoiced at \$20.00+gst per week depending on volume of product.
9. **Delivery:** **a)** CG accepts no responsibility for delivery but may elect to arrange delivery at its discretion without any liability, at the Customer's cost & responsibility in all things **b)** CG reserves the right to charge for any delivery **c)** the Customer shall be deemed to have accepted delivery & risk in the Products immediately when they are delivered to a carrier or to the Customer's business premises or site whether attended or not (this applies even if the Customer postpones collection or refuses to collect the Products) **d)** a document signed by an officer of CG confirming delivery shall be conclusive evidence of delivery as shall any signed delivery docket **e)** CG will not be liable for delay, failure or inability to deliver any Products **f)** once the Customer has been notified that Products are ready for collection, the Customer agrees to pay all costs of CG in holding or handling Products **g)** Frustrated Delivery: If the time spent in attempting to or effecting delivery exceeds 30 minutes or requires more than one attempt, the Customer agrees to pay all costs relating thereto together with a loading of 10% to cover administration costs.
10. **Variation** or cancellation of any order, dealing or arrangement must be agreed in writing.
11. **Purchase Price:** **a)** CG's quotation is not an offer. The Customer's order is an offer to CG which CG may or may not accept. If CG accepts the offer it may do so by written notice or by delivering the products. All sales are made by CG at its ruling price at the time of delivery **b)** government taxes, duties, imposts and any GST ("imposts") will be added to the Credit Account **c)** CG's price lists and quotations exclude imposts unless expressly noted thereon.
12. **Exclusions:** To the maximum extent permitted by law: **a)** No dealing with the Customer shall be or be deemed to be a sale by sample or description **b)** If CG publishes material about its Products & prices, any part which is incompatible with these Terms is expressly excluded **c)** The customer will rely on its own knowledge & expertise in choosing any product for any purpose **d)** Any advice or assistance given for or on behalf of CG shall be accepted at the Customer's risk & shall not be or be deemed given as expert or advisor nor to have been relied upon.
13. **Default:** If default occurs: **a)** CG may retain all monies paid under and in relation to this Agreement **b)** the Credit Account will become immediately due and payable, **c)** CG may cease further deliveries to the Customer **d)** CG may charge interest on the full amount of the Credit Account until it is paid in full **e)** CG may take possession of the Products **f)** CG may terminate this Agreement and issue proceedings to recover the full amount of the Credit Account and any loss of profits without prejudice to any of CG's other rights.
14. **Severability:** Any part of these Terms can be severed without affecting any other part.
15. **CG's modification of Products** **a)** CG may at any time update, modify, make substitution or alter any of its Products or any component or raw material incorporated in or used in forming any part of any Products as part of its ongoing business **b)** The Customer agrees to accept such Products in substitution for any Products ordered provided they are not materially different **c)** CG disclaims any responsibility or liability relating to any Products **i)** processed or made to designs drawings specifications or measurements ect or with materials which are provided or approved (whether in part or fully) by or on behalf of the Customer **11)** utilised, stored, handled, or used incorrectly or inappropriately **d)** The Customer agrees to check Products for compliance with all applicable standards & regulatory bodies before use, on-sale or application & only to use, on-sell or apply Products in accordance with any manufacturer's or CG's recommendations & directions as well as with sound commercial practice.
16. **Other Terms & Conditions & Notice:** No terms &/or conditions sought to be imposed by the Customer upon CG shall apply unless agreed in writing by CG.
17. **Recovery Costs:** The Customer will pay on a full indemnity basis all costs & expenses of CG, its legal advisors, mercantile agents & others acting on its behalf in respect of anything instituted or being considered as result of any breach of these Terms or of any dealings with CG.
18. **Customer Restructure:** The Customer will notify CG of any change in its structure or management including any change in director, shareholder, management, partnership or trusteeship or sale of any material part of its business within 7 days of any such change.

19. **Jurisdiction:** All contracts made with CG shall be deemed to be made in Victoria & the parties submit to the exclusive jurisdiction of the Courts of that State.
20. **Credit Limit:** CG can vary or withdraw any credit facility or limit at any time at its discretion & without any liability to the Customer or another party.
21. **Waiver:** If CG elects not to exercise any rights arising as a result of breach of these Terms this will not constitute a waiver of any rights relating any subsequent or other breach.
22. **Notice:** The Customer will be deemed to have notice of any change to these Terms, immediately when they are adopted by CG in its business.
23. **Security For Payment:** The Customer acknowledges and agrees that **a)** these Conditions constitute a Security Agreement for the purposes of the PPSA which creates a Security Interest in favour of CG in the Products and in all present and after acquired property supplied by CG to the Customer (or for the Customer's account) until the price for the Products and the Credit Account has been paid for in full; **b)** CG may, without notice to the Customer, register its Security Interest in the Products, in all present and after acquired property and in their proceeds as a Purchase Money Security Interest on the Register; **c)** the Customer will do all things necessary to facilitate Registration of CG's Security Interest; **d)** the Security Interest is not discharged nor the Customer's obligations affected by the administration of the Customer. Where the PPSA applies to action taken by CG in relation to the Products, the Customer waives its right to receive any notices required under sections 95, 118, 121, 130, 132 or 135 of the PPSA. The Customer waives its rights under section 157 of the PPSA to receive a verification statement and also waives its rights under sections 96, 125, 142 and 143 of the PPSA.
24. **Force Majeure:** CG will not be in default or breach of any dealing with the Customers a result of anything beyond CG's reasonable control **a)** Force Majeure Event.
25. **Intellectual Property:** If CG utilises any design, patent or intellectual property or follows any instruction provided by or on behalf of the Customer, the Customer indemnifies CG against any claim proceeding damages or liability for any loss, cost or expense arising as a result whether for any alleged infringement of any intellectual property or otherwise.
26. **Inspection:** Product sold subject to customer inspection shall be inspected prior to any dispatch and conducted at premises notified by CG within 7 days of such notification.
27. **Specifications:** **a)** Any illustration, drawing or specification supplied by CG ("Specs") are drafts and approximates **b)** Any tangible or intellectual property rights in Specs shall remain the property of CG and may be recalled at any time **c)** Specs to be treated at all times as confidential and not made use of without the prior written consent of CG.
28. **Materials:** All materials supplied by the Customer must be shipped by the Customer to the factory or site nominated by and in accordance with CG instructions & at the cost and risk of the Customer. Such materials will remain at the Customer's risk all times.
29. **Stock Discretion:** CG has a continuing discretion to allocate available stock and gives no warranty as to certainty of supply.
30. **Partial Delivery/Forward Orders:** If the Customer places forward orders or requests partial or instalment delivery, the Customer agrees to **a)** pay for so much of any orders is from time to time delivered by CG **b)** that no delay or failure to fulfil any part of any order shall entitle the Customer to cancel or vary any order or delay or reduce any payment.
31. **Acceptable Variation:** The Customer will accept variation in quantity of Products supplied at plus or minus 5% and will pay pro-rata for the actual quantity delivered.
32. **Minimum Charge:** The Customer will pay CG its minimum charge for anything the Customer orders which is below CG's application prevailing minimum order at the time of order.
33. **CG not a Manufacturer:** The Customer acknowledges that CG does not manufacture glass product and accepts no liability in relation to the manufacture of any Products whatsoever and gives no warranty of suitability or fitness for any purpose of any Products (refer these Terms generally, including clauses 4 & 11).
34. **On-Sale:** The Customer agrees that upon on-sale of any Products to inform any third party involved of these Terms and in particular the provisions of clause 4.
35. **Warranty** CG warrants that the glass panels are supplied free from defects in material and workmanship and are of acceptable quality.
36. **Indemnity:** The Customer indemnifies CG against any claim or loss arising from or related in any way to any contract or dealing between CG & the Customer or anything arising therefrom or arising as a result of or subsequent to any breach by the Customer of these Terms
37. **Insurance:** The Customer agrees to insure the Products against any risk of loss or damage for the Products full invoice amount and not CG's Security Interest on the insurance policy until the Credit Account is paid in full. The Customer acknowledges and agrees that it is responsible for filing any claims for loss or damage of the Products against the insurer and direct the insurer to make any payments to CG of all of the insurance monies in respect of any claim(s) made with respect to the Products (which will be applied to the Credit Account).

#### **Definitions**

**ACL** means The Australian Consumer Law as set out in Schedule 2 of the Competition and Consumer Act 2010 (Cth);

**Agreement** means these Terms, the Application for Commercial Credit Account and the Agreement to Guarantee and Indemnify;

**All present and after acquired property, Purchase Money Security Interest, Registration, Security Agreement, Security Interest and Verification Statement** have the meanings prescribed to them in the PPSA;

**Application for Commercial Credit Account** means an application by a Customer to purchase Products subject to these Terms on credit;

**Authorised Person** means the person described in item 9 of the Application for Commercial Credit Account;

**Credit Account** means any monies owing by the Customer to CG at any given time on any account or on any other basis whatsoever;

**Credit Account Customer** means a Customer who has had an Application for Commercial Credit Account with CG approved which remains current.

**Consequential Loss** means loss of revenue, profits, anticipated savings or business opportunity and any form of consequential, special, indirect, punitive or exemplary loss or damages;

**Default** includes the following circumstances:

- a) where the Customer fails to comply with or perform any of its obligations under this Agreement;
- b) where the Customer fails to pay by the due date any amount due and payable by it under this Agreement;
- c) where any representation or statement made by Customer is untrue or misleading; or
- d) where an Insolvency occurs,

**Guarantor** means the parties (jointly and each of them severally) described in Part D of Agreement to Guarantee and Indemnify;

**Insolvency** includes, in relation to Customer and/or Guarantor, being in liquidation or provisional liquidation or under administration or being unable to pay its debts as and when they fall due or being otherwise insolvent;

**Invoice Date** means the date of the invoice from CG to Customer for the purchase of the Products; Other Property means all present and after acquired rights and interests in land any other property, rights and interests that is not Personal Property;

**Personal Property** means all present and after acquired personal property (as defined in the PPSA and to which the PPSA applies) in which the Customer has rights;

**PPSA** means the *Personal Property Securities Act 2011* (Cth);

The following words have the respective meanings given to them in the PPSA: account, attaches, commingled, inventory, perfected

**Products** means any goods or services and includes any amendments referred to in clause 14.