

**GLASS NOW PTY LTD A.C.N. 096 683 411 TERMS OF SALE AND DELIVERY FOR BUSINESS CUSTOMERS**

**1 General**

- 1.1 The terms and conditions set out below are designed to provide certainty to both parties and to avoid any misunderstanding in the case of a dispute arising. Please read carefully these terms and conditions and seek clarification from either our manager or a solicitor if you are unclear on any point. These terms shall prevail over any other.
- 1.2 These conditions of sale are entered into on behalf of and are intended to bind and be for the benefit of Glass Now and Glass Now's successors and assigns.
- 1.3 In these terms of sale and delivery are:
  - 1.3.1 "Glass Now" means Glass Now Pty Ltd A.C.N. 096 683 411 and its successors and assigns
  - 1.3.2 "buyer" means the person, firm, company or entity to whom goods are supplied or agreed to be supplied by Glass Now whether by sale and purchase or on consignment or credit account.
  - 1.3.3 "goods" means all goods and or services which are the subject matter of any contract for purchase between Glass Now and the buyer and any goods supplied by Glass Now to the buyer and, where the context requires includes any part or portion of the goods.
  - 1.3.4 "these terms" means these terms of sale and delivery for business customers of Glass Now.
  - 1.3.5 "contract price" means the price of the goods as agreed between Glass Now and the buyer subject to any variation in accordance with clause 5.
  - 1.3.6 "person" includes a corporation, association, firm, partnership or individual.
  - 1.3.7 "GST" means a goods and services tax under "A *The New Tax System (Good and Services Tax) Act Cth 1999 (As amended)*".
- 1.4 Headings are used as a matter of convenience only and shall not effect interpretation of these conditions.

**2 Application of these general terms**

- 2.1 These terms apply to all contracts for the supply of the goods.
- 2.2 The buyer acknowledges that it purchases the goods from Glass Now for the purposes of business and that these terms shall have full effect notwithstanding any contrary or inconsistent provision in the *Sales of Goods Act* or equivalent legislation of any state of Australia or at a federal level the *Trade Practices Act Cth 1974*.

**3. Orders**

- 3.1. All orders must be made in writing.
- 3.2. Orders will be subject to approval or acceptance by Glass Now.
- 3.3. Any variation, waiver or cancellation of the buyer's order has no effect unless agreed to in writing by the Glass Now.

**4 Entire agreement**

- 4.1 These terms constitute the entire agreement between Glass Now and the buyer for the supply of the goods, and the buyer acknowledges that they shall apply to the exclusion of any standard terms or conditions of trade of the buyer.
- 4.2 No modifications, alterations or additions to these terms shall form part of the contract unless accepted by Glass Now in writing.
- 4.3 There have been no representations made by either party to the other except such as expressed in these terms and conditions.
- 4.4 Glass Now may from time to time amend these terms and conditions by posting to the address for service of the buyer a written set of amended terms. The buyer and any guarantor(s) agree that the amended terms shall be effective upon posting and are deemed accepted by them by the buyer placing any order after the date of posting.

**5. Price**

- 5.1. The buyer shall pay the price indicated on the invoice, order form or similar document as issued by Glass Now in Australian Dollars.
- 5.2. Where the price indicated is a quotation or estimated price by or on behalf of Glass Now then the following shall apply;
  - 5.2.1. The quotation or estimated price shall unless otherwise stated constitute an invitation to the buyer to make an offer to contract and no contract shall be formed until the buyer's order has been accepted by Glass Now.
  - 5.2.2. The buyer shall also in addition to the price indicated in the quotation or estimated price pay any difference between the price in effect at the date of the quotation (if the quotation is older than 21 days) or estimated price, and the price in effect upon delivery of the goods.
  - 5.2.3. The buyer shall pay in addition to the price any goods and services tax or any other value added tax or similar tax which may be payable in respect of the supply of the goods.
  - 5.2.4. The buyer shall make payment in full and free from any deduction, withholding, setoff or counterclaim whatsoever.
- 5.3 Payment term  
It is agreed between Glass Now and the buyer:
  - 5.3.1. That this contract is to be a "cash sale" unless otherwise agreed and the buyer must pay the amount owing prior to the delivery of any goods except at Glass Now's sole discretion.
  - 5.3.2. Any deposit required by Glass Now will be paid immediately on the creation of this contract and is non refundable
  - 5.3.3. Where credit is extended by Glass Now in its sole discretion, then full payment is due on the 20<sup>th</sup> day of the month following the date of delivery.
  - 5.3.4. At any time before completion of the contract, and as a condition precedent to the performance by Glass Now of the contract, Glass Now may request the buyer to produce evidence in a form and of a nature acceptable to Glass Now of the buyer's ability to pay all moneys which may be or become due to Glass Now under the contract, and if the buyer shall fail to produce such evidence, then the buyer shall be deemed to have made default under the contract, and Glass Now shall be entitled, without prejudice to any other remedy it may have, to cancel the contract.
  - 5.3.5. Notwithstanding any credit period allowed by Glass Now to the buyer, full payment shall become immediately due and payable upon the buyer becoming insolvent, or if the buyer resolves to wind up or voluntarily or otherwise place itself into bankruptcy, or is ordered to be wound up or be placed into bankruptcy, or has a receiver, liquidator, administrator, trustee, or official manager appointed in respect of all or any of its assets.
  - 5.3.6. If the buyer fails to make any payment by the due date, whether in whole or in part, then the buyer will be in default under these terms, and Glass Now may, without limiting its other rights in respect of such default, charge interest on the amount unpaid at the rate of 3% per month compounding calculated on a daily basis from the due date for payment until payment in full is received by Glass Now; such interest being payable by way of liquidated damages, and not as a penalty.
  - 5.3.7. If Glass Now incurs any liability, costs, charges, or expenses, including solicitor and own client costs, in the course of enforcing any of its rights under these agreements, then the amount thereof shall be payable by the buyer to Glass Now upon demand and the buyer

indemnifies Glass Now for the amount of these costs or liability or expenses etc etc.

- 5.3.8. Should any default occur Glass Now shall be entitled to recover from the buyer any discount given on the unpaid goods and all legal and other associated costs however incurred by Glass Now arising from the enforcement/or collection of the amount due and owing.
- 5.3.9. Glass Now may allocate any payment made on the customers account as Glass Now feel fit and may do so notwithstanding any specific tender by the buyer.
- 5.3.10. The buyer acknowledges that Glass Now supplied the buyer on the condition that all payments made and received by Glass Now from the buyer are valid and made in the ordinary course of business.

## **6 Performance and delivery**

- 6.1. Performance of the contract by Glass Now is subject to Glass Now being able to obtain all export and import licences, permits to remit moneys abroad, and the like, necessary to enable Glass Now to import and pay for any goods or materials required for completion of the contract.
- 6.2. Delivery is to be made at the place indicated in the contract or, if no place is indicated in the contract, delivery is to be made at the buyer's premises. If the buyer fails or refuses or indicates to Glass Now that it will fail or refuse to take or accept delivery, then the goods are deemed to have been delivered when Glass Now was willing to deliver them.
- 6.3. Where the buyer requests a carrier other than the contract carrier to Glass Now, Glass Now must approve the alternate carrier. Glass Now reserves the right in its reasonable discretion to withhold such approval. Should the buyer take delivery of the goods direct or by their chosen carrier then in accordance with clause 7.1 risk in the goods will pass to the buyer at the time the goods are uplifted from Glass Now.
- 6.4. Glass Now reserves the right to deliver the goods by instalments and each instalment is deemed to be a separate contract under the same provisions as the main contract. Should Glass Now fail to deliver or make effective delivery of one or more instalments this shall not entitle the buyer to repudiate the main contract.
- 6.5. The buyer shall not reject or refuse to accept the goods and delivery shall constitute deemed acceptance by the buyer.
- 6.6. If the goods are delivered in a damaged condition or if there is a shortage of delivery, the buyer shall advise Glass Now within two days of such delivery and shall confirm the same to Glass Now in writing within same days of such delivery, failing which Glass Now will be under no responsibility whatsoever for any such damage or shortage of delivery.
- 6.7. Although Glass Now will use its best endeavours to deliver the goods within the time specified by the buyer, such dates shall not be of the essence of the contract and Glass Now shall not be liable for any loss, expense, injury, damage, or claim whatsoever or howsoever arising from any delay, howsoever such delay is caused.
- 6.8. The goods will be packed by Glass Now and such packaging will be generally suitable for the protection of the goods under normal transport conditions provided that the packaging is not damaged or disturbed. Save as aforesaid Glass Now shall not be liable for any damage, loss, or injury (whether direct or indirect) caused to the buyer arising from the packaging of the goods.
- 6.9. Without prejudice to any other rights and remedies which it may have, Glass Now may charge storage and transportation expenses if the buyer fails or refuses to take or accept delivery at the time specified in the contract or at any other times as Glass Now is able to deliver the goods.

## **7 Risk**

- 7.1 Risk in the goods shall pass to the buyer when the buyer takes delivery of the goods, the buyer is deemed to have taken delivery of the goods, or the buyer's carrier takes the goods from Glass Now, provided that if the buyer fails to accept the goods, or requests that delivery of the goods be delayed, then risk in the

goods shall be borne by the buyer from the time of such failure or request, as the case may be.

## **8 Ownership of the goods**

- 8.1 Glass Now retains legal and beneficial ownership of the goods until such time as all moneys payable to Glass Now by the buyer have been paid in full. Until full payment has been made the buyer acknowledges that it holds the goods in a fiduciary capacity as bailee on behalf of Glass Now and should the buyer make default in payment of any amount due to Glass Now, or part thereof, then Glass Now may retake possession of the goods until payment is made, or, at its option, resell the goods but without prejudice to its other rights and remedies.
- 8.2 The buyer irrevocably authorises Glass Now, its employees, agents or servants to enter on to the land and or enter into any buildings to retake possession of the goods without giving the buyer any period of notice, and without in any way being liable to the buyer, or any person claiming through the buyer, for any damage which may be caused as a result of taking such action.
- 8.3 If the buyer sells or trades the goods then the goods will be sold at market value. While the buyer shall deal as principal and Glass Now shall not be liable to any person with whom the buyer deals, nevertheless the buyer will hold the entire proceeds of sale or other dealing in respect of the goods in trust for Glass Now in a separate account for Glass Now and the buyer shall not deal with the money of Glass Now in any way adversely to Glass Now.
- 8.4 Glass Now is entitled to demand that the buyer exercise all of its available rights to enforce payment by the person or persons to whom the goods have been or will be sold or supplied. However that will not affect any other rights and remedies of Glass Now as against the buyer.
- 8.5 Any costs incurred by Glass Now in exercise of the powers hereunder, whether relating to repossession, storage, or resale of the goods, or otherwise, shall be immediately due and payable by the buyer to Glass Now.

## **9 Warranty**

- 9.1 Where provided by the further terms of payment for the goods Glass Now will repair or replace, as it shall in its sole discretion think fit, any part of the goods which have been supplied by Glass Now and which prove to be faulty during the warranty period by reason only of defective materials and defective workmanship.
- 9.2 If any defect becomes evident within the warranty period and any part of the goods supplied by Glass Now, Glass Now will use its best endeavours to obtain for the buyer the benefit of any guarantee or warranty given by the manufacturer of such item, but shall otherwise be under no liability whatsoever in respect of such defect.
- 9.3 In this context "warranty period" means the period of time specified in the quotation or estimated price commencing on the date of delivery of the goods. If no period is specified in the quotation or estimated price, then the warranty period is as stated in the Glass Now policy current at the time of sale (available from the company on request).
- 9.4 Glass Now shall not be liable under the previous two paragraphs 9.2 and 9.3 unless it is satisfied that the goods have since delivery been stored, used, and maintained properly in accordance with any instructions or recommendations given by Glass Now or the manufacturer of the goods.
- 9.5 Glass Now shall incur no liability pursuant to this clause unless the buyer notifies Glass Now in writing within five days upon any defect occurring and unless the buyer provides Glass Now properly with all information concerning the goods, such defect and the use, and storage thereof since delivery. Glass Now may reasonably require the return of the stock.
- 9.6 In no circumstances whatsoever shall Glass Now be liable for damage, injury or loss of any kind whatsoever to any property or persons or produce howsoever caused arising from default or defect in the goods or arising by way of consequential loss or damage.
- 9.7 Save as aforesaid Glass Now shall be under no liability to the buyer in respect of the description, quality, fitness for any

purpose of the goods and all terms, conditions and warranties in respect of such description, quality or fitness whether statutory or otherwise and whether expressed or implied are hereby expressly excluded.

## **10 General matters**

10.1 Glass Now shall not be liable for any loss, injury, expense or claim of whatsoever nature and howsoever arising out of any contract with the buyer or the goods, or their design, or use except as provided elsewhere in these terms and the buyer shall indemnify Glass Now in respect of any such loss, injury, damage, expense or claims suffered by or made against Glass Now.

10.2 The buyer agrees that in the event of any default of the provisions of these terms and conditions and as security for all indebtedness of the buyer to Glass Now, from time to time, in consideration of among other things forbearing to sue immediately for the debt, the buyer hereby irrevocably agrees to grant to Glass Now a mortgage as security for any money owing over all real property in Australia which the buyer or a guarantor hereof is registered as the owner or has an interest in and the buyer and or guarantor consents to and acknowledges that Glass Now may lodge a caveat over all such land pending completion of any court proceedings. The buyer and or guarantor hereby:

10.2.1. Grants an irrevocable power of attorney to Glass Now to execute such document as may be required to perfect and register this interest, and;

10.2.2. Agrees to provide such assistance as may reasonably be required by Glass Now.

10.3 All clauses, words, phrases, sentences, paragraphs in these conditions are separate and independent from the other, each are being severable from the other and if any of them, or any part thereof, are held or found to be void, invalid or unenforceable they shall be severed from here to the extent of the voidance, invalidity or unenforceability but the remainder shall remain in full force and effect.

## **11 Disputes**

11.1 In the event of any liability of whatsoever nature being established against Glass Now in any way whatsoever for which a specific remedy is not otherwise given in these terms, the buyer's sole remedy shall be damages. All such damages shall be to the sum of [5%] of the contract price for the supply of the relevant goods by Glass Now.

## **12 Law**

12.1 The parties submit themselves to the non exclusive jurisdiction of Australia, and this contract shall be governed by the law of Australia and shall be construed in all respects as an Australian contract.

## **13 No assignment**

13.1 The buyer may not assign all or any of the buyer's rights or obligations under the contract without the prior written consent of Glass Now.

## **14 Privacy**

14.1 The buyer hereby agrees and authorises Glass Now to obtain information about the buyer from the buyer or any third party or to divulge any such information to any third party in the course of Glass Now's business activities including but not limited to any credit or debt collection agency for the purposes of credit assessment or debt collection and any direct marketing activities.

14.2 The information collected shall be retained by Glass Now for the duration the buyer holds an account or continues to purchase goods from Glass Now or is indebted to Glass Now. The buyer shall be provided with access to the information held by Glass Now for review or corrective purposes.

## **15 Priority of Security**

15.1 The buyer acknowledges and agrees that Glass Now has a security interest in all goods supplied to the buyer but not paid for ("the collateral"). The buyer shall ensure that no other party is granted a security interest in the collateral without Glass Now's prior written consent.

15.2 The buyer will at the buyer's cost provide Glass Now with all information and do anything reasonably required by Glass Now and pay any registration costs required to ensure that Glass Now has priority over the goods to the exclusion of other parties granted security.

15.3 In the event that the buyer is in default of its obligations pursuant to this agreement Glass Now shall be entitled to remove and take possession of and sell (by auction, public tender, private sale, or any other method which Glass Now may reasonably consider to be appropriate in the circumstances), the Collateral and for such purpose the buyer and or its assignees or successors hereby gives Glass Now and or its agents a licence by its agents to enter into and if necessary to break into any building occupied by the buyer and as the agent of the buyer to enter upon any premises which the buyer might enter upon to search for and take possession of the Collateral without being liable in any way for break and enter or trespass or any other criminal law or tort to the buyer or any person claiming under the buyer for doing so.

## **16 Notices**

### **16.1 General**

Any notice, demand, certification or other communication under this document shall be given in writing and in the English language and may be given by an authorised officer of the sender.

### **16.2 Method of giving notices**

A communication required or permitted to be given by one party to another under this document must be in writing and is treated as being duly given if it is:

- (a) left at that party's address;
- (b) sent by pre-paid mail to that party's address;
- (c) transmitted by telex to that party's address; or
- (d) transmitted by facsimile to that party's address.

### **16.3 Time in receipt**

A communication given to a party in accordance with clause 16.2 is treated as having been duly given and received:

- (a) when delivered (in the case of it being left at that party's address);
- (b) on the third business day after posting (in the case of it being sent by pre-paid mail);
- (c) on the business day after transmission (in the case of it being given by telex and that party's answerback being received) following the transmission; and
- (d) on the business day of transmission (in the case of it being given by facsimile and sent to the facsimile receiver number of that party and no intimation having been received that the notice had not been received, whether that intimation comes from that party or from the operation of facsimile machinery or otherwise).

## **17. Severance**

17.1 If anything in this Agreement is unenforceable, illegal or void then it is severed and the rest of this agreement remains in force.

17.2 If the deletion referred to above would materially alter the intention of the parties as expressed or implied in this agreement, or the underlying commercial arrangements as evidenced by this agreement would be materially altered, the parties shall negotiate in good faith and use their best endeavours to reach agreement on the substitution of a new provision or provisions which will result in equity between the parties being restored so that, as nearly as may be practicable, the parties shall in all respects be in no different position from that which would have been attained had there been no invalidity or unenforceability.

