



ARCHER GLASS PTY. LTD.- STANDARD TERMS AND TRADING CONDITIONS

1. Definitions and Interpretation

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

“Contractor” means Archer Glass Pty Limited ABN 17104981517 its successors and assigns and any person acting on behalf of and with the authority of Archer Glass Pty Limited.

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

“Goods” includes, but is not limited to, glass and glass products including doors, windows, splash backs, mirrors, shower screens, glass roofs, glass fencing, glass walls, film and any other associated equipment or hardware and parts therefore, as described on the Contractor’s quotes, tax invoices and other documents supplied to the Customer.

“Site” means the place where the Contractor’s work will be carried out.

2. Acceptance of Trading Conditions

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

3. Quotes/ Products and Services Specification

3.1 The Contractor shall provide a quote to the Customer, which will specify the work required to be completed and an estimate of the Contractor’s charge for the performance of the work.

3.2 For supply and install contracts, the Contractor shall request a deposit from the Customer, as specified in the quote.

3.3 For supply only contracts (no install) payment in full is required when the quote is accepted.

3.4 All quotations are subject to final measurements and further on-site consultations.

3.5 The Customer shall accept the quote by signing and returning a copy of the quote or Work Authorisation form. The Customer can return the copy of the signed quote or Work Authorisation by facsimile, email (scan), or any other acceptable method of electronic communication and these methods will be accepted by the Contractor and binding upon the Customer.

3.6 The Contractor need not commence work until the quote has been accepted in writing by the Customer, and the required deposit or payment made to the Contractor.

3.7 The commencement date for delivery of the Goods and services is an estimate only. The commencement date shall not be of the essence in these Trading Conditions.

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

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

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

3.11 Quotes provided by the Contractor do not include nor allow for any:

- (a) structural support or preparatory works;
- (b) scaffolding or lifting equipment;
- (c) zoning certificates;
- (d) building permits or certificates;
- (e) council permits for any requirement, including but not limited to, footpath closures and works conducted outside of normal working hours.

4. Standards of Work and Product Guidelines

4.1 All toughened glass has an allowable acceptable tolerance of between 1mm and 3mm.

4.2 The Contractor will clean glass to a trade clean standard, not a commercially clean standard.

4.3 Glass to glass silicone butt joints has an allowable tolerance of plus or minus 2mm (maximum permissible joint width 5mm).

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

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

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

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

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

4.9 Glass is to be viewed in normal lighting against an opaque background in a vertical position by a stationary observer positioned no less than 2 metres from the surface.

4.10 All background lighting affects the appearance of painted glass.

4.11 Scratches, scars, minor defects and pinhole touch-ups are acceptable provided they are visible with the naked eye when viewed from a distance of no less than 2 metres.

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

5. Variations

Variations to an accepted quote or contract may incur additional costs to the Customer.

6. Cancellation

The Customer shall reimburse the Contractor for any and all costs, expenses or losses incurred by the Contractor if the Customer cancels an accepted quote or Work Authorisation.

7. Customer Obligations

The Customer:

- (a) shall provide the Contractor with all requested and necessary information and details, including but not limited to, measurements, plans, specifications and drawings;
- (b) shall indemnify the Contractor for any extra cost, loss or damage for any variation in price caused by inaccurate information provided to the Contractor;
- (c) shall indemnify the Contractor for the cost of Goods if the Contractor orders Goods based upon the inaccurate information and those Goods are not suitable for the work;
- (d) is responsible to obtain all necessary and required permits, approvals and certificates;
- (e) shall advise the Contractor whether any works are to be constructed on bush fire prone land, and if so, the bush fire attack level (BAL).

8. Delivery of Goods

8.1 Where required delivery of the Goods shall be made to the Customer's nominated address, and the Customer shall make all necessary arrangements to take safe delivery. The Customer may nominate a third party address for delivery of Goods, and in that case delivery to that third party is deemed delivery to the Customer for the purpose of this agreement.

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

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

8.4 The Customer shall indemnify the Contractor for any costs, loss or damages incurred by the Contractor should site access not be available and as a consequence the Contractor is unable to deliver the Goods.

9. Site Access

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

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

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

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

11. Risk

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

12. Payment

12.1 The Customer must pay the Contractor the total amount set out in the Contractor's invoice and within the time stated on the Contractor's invoice, quotation or any other order forms. If no time is stated then payment is due seven (7) days following invoice date.

12.2 The Contractor may require a deposit from the Customer. If a deposit is required the Contractor is under no obligation to commence work until the deposit funds are received.

12.3 If a dispute arises or a claim made for unpaid Goods or services, then the provisions of the Building and Construction Industry Security of Payment Act 1999 may apply.

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

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

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

13. Contractor's Indemnity

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

13.2 At the conclusion of the work, the Customer shall sign off that the work has been completed by the Contractor in accordance with the quote or Work Authorisation.

13.3 If the Customer does not comply with clauses 11.1 or 11.2 the Customer shall indemnify the Contractor from any claims or charges relating to damage and or loss of property from the site.

14. Retention of Title

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

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

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

14.4 If the Customer fails to pay invoices issued by the Contractor for Goods and services, the Contractor may remove or repossess any Goods from the Customer and sell or dispose of the Goods. The proceeds of any sale shall be applied towards the Customer's indebtedness to the Contractor. The Contractor shall not be liable to the Customer or to any person or entity claiming through or on behalf of the Customer.

15. Lien and Stoppage in Transit

Where the Contractor has not received payment as agreed from the Customer, or the payment has been dishonoured, the Contractor, its servants or agents shall have a special and general lien on the Goods and a right to sell the Goods whether by public or private sale or auction without notice to recover all monies due under this contract. In addition, the lien shall cover the costs and expenses of exercising the lien including without limitation, the costs of sale and reasonable legal fees.

**16. Personal Properties Securities Act 2009 (“PPSA”)**

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

16.2 These terms and Conditions create a Security Agreement that creates a Security Interest in all Goods and Proceeds supplied to the Customer or to be supplied in the future. The Security Interest is a continuing Security Interest in all Goods and Proceeds which will operate until the Contractor signs a release.

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

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

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

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

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

17. Warranty

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

18. Liability/ Australian Consumer Law

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

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

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

19. Privacy

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

- (i) Provision of Goods and services
- (ii) Verifying and checking the Customer’s credit
- (iii) Processing of payment instructions, direct debit or credit facilities

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

20. Security, Caveat and Charge

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

21. Dispute Resolution

Notwithstanding either parties rights that may exist under the Building and Construction Industry Security of Payment Act 1999 either party may refer any dispute under, or arising out of, this contract to the Institute of Arbitrators & Mediators Australia, for resolution by conciliation and/ or arbitration under the Rules of the Construction Industry Dispute Resolution Scheme.

22. No Waiver

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

23. Severability

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

24. Governing law and Jurisdiction

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