

TERMS AND CONDITIONS

These are the Terms and Conditions of Trade that apply to all materials, product (manufactured or otherwise) and/or services (the "goods") supplied by **A. A. WINDOW & DOOR REPLACEMENT SERVICE PTY LTD** (ACN 007 931 437) (the "Company") to any person, firm or Company accepting a quotation/placing an order (the "Customer") with the Company for the purchase and/or supply of any goods (the "sale") These terms and conditions shall apply notwithstanding any provision to the contrary which may appear on any order form or other document issued by the Customer. No person acting or purporting to act on the Company's behalf has the authority to make any promise, representation or undertaking or to add to or change in any way these terms and conditions except as expressly provided in writing by a duly authorised officer of the Company.

APPLICATION – The Customer acknowledges that these terms and conditions apply in relation to all sales by the Company to the Customer.

QUOTATIONS – Quotations for goods by the Company shall be on a pre-printed form issued by the Company and shall remain open for acceptance for a period of thirty (30) days from the date of the quotation, or if no date is specified then for thirty (30) days from the date it was provided to the Customer unless otherwise withdrawn by the Company in the interim period. In the absence of acceptance after thirty (30) days the quotation is voidable at the option of the Company which may, in its absolute discretion, determine or vary the quotation. Any quotation containing any error or omission, or based, calculated or determined on any misunderstanding of any nature whatsoever, can, in the Company's absolute discretion, be withdrawn at any time notwithstanding that it may have been accepted by the Customer and a deposit paid (which deposit shall be refunded in full in the event the Company withdraws its quotation).

Both the Company and the Customer acknowledge that the quotation contains the whole of the agreement between them (errors and omissions excepted) and supersedes any prior negotiation or direction whether oral or in writing. Any variation to any quotation after acceptance must be in writing, signed by the Customer and acknowledged in writing by the Company.

ACCEPTANCE – Any quotation provided by the Company shall be accepted by the Customer in writing (or otherwise in the absolute discretion of the Company) and shall be accompanied by the required deposit (if any) in full (if such deposit is paid by cheque, then upon presentation and clearance in full of such cheque).

A quotation on acceptance shall be an "order" for goods to be supplied by the Company as set forth in the quotation.

CANCELLATION – No order may be cancelled by the Customer without the prior written consent of the Company provided further;

- (a) Where a deposit has been paid to the Company, the whole of that deposit shall be forfeited to the Company; and
- (b) Where the Company has purchased materials and/or accessories and/or completed work in satisfaction of the order and the costs of such materials, accessories and/or work exceeds the amount of the deposit (if any) paid, the Company shall invoice the Customer for such balance which sum shall immediately become due and owing to the Company by the Customer.

COLLECTION OF GOODS - Goods supplied by the Company, excluding delivery, shall be collected by the Customer within ten (10) days after the date that the Company has advised the Customer that they are ready for collection. In the event that the goods are not so collected by the Customer, the Company;

- (a) May, in its absolute discretion, determine to deliver or cause to be delivered the goods to the Customer at the address shown on the quotation or the last known place of business or residence of the Customer. The costs of any such delivery shall be payable by the Customer which sum shall immediately become due and payable to the Company by the Customer, or
- (b) Give notice in writing to the Customer at its last known address that the Company will after a further ten (10) days from the date of the notice consider the goods to have been abandoned and sell or otherwise use or dispose of then goods.

The Customer shall not be relieved of its obligations to accept or pay for the goods in either event.

DELIVERY – Any time/s quoted by the Company for delivery are estimates only. The Company reserves its right to deliver goods in part or in the whole and where in part shall not entitle the Customer to repudiate the contract. Delivery will be deemed to have been effected when the goods are off-loaded at the place specified on the quotation or as the Company may have otherwise been advised, or where no place is specified then at the last known address of the Customer.

The Customer acknowledges that the number of men to be provided by the Company for the purpose of delivery is recorded on and forms part of the quotation and will provide additional assistance to the Company's representative effecting delivery where reasonably necessary. Where such additional assistance is not available the Company may, in its absolute discretion, provide such additional assistance at the costs in all things of the Customer, which sum shall immediately become due and owing to the Company by the Customer.

Any delivery by the Company shall (unless expressly agreed by the Company) be to the ground area immediately adjacent to the roadway to the front of the premises for the delivery. The Company does not expect its personnel to traverse uneven surfaces, stacks or piles of other goods and/or services or to traverse any other impediment to off-loading the goods and may, in its absolute discretion, via its agent/s, refuse to off-load any goods where such impediments exists, or in circumstances where to do so would contravene any health and safety legislation or regulation. In such event, delivery shall be deemed to have been effected at the time of any such refusal notwithstanding that the goods have not been off-loaded. The Company shall not be liable in anyway whatsoever for any refusal to deliver in such circumstances and may in its absolute discretion apply a further delivery charge for any subsequent delivery or attempt to deliver.

FORCE MAJURE – The Company shall not be liable for any failure or delay to manufacture, supply or deliver goods where such failure is wholly or partly due to any cause or circumstance whatsoever outside the reasonable control of the Company including but not limited to war, strikes, lockouts, industrial disputes, government restrictions or intervention, transport delays, fires, Acts of God, breakdown of plant and equipment, shortage of supplies or labour, storm or tempest, theft, vandalism, riots, civil commotion or accidents of any kind.

TITLE TO GOODS – All goods supplied by the Company shall be at the Customer's risk from the time of delivery. The legal and equitable title to the property in the goods shall not pass to the Customer until the Customer has paid all monies owed to the Company. Payment shall not be deemed to have been made until all cheques passed in payment have been presented and cleared in full.

The Company reserves its right to enter upon any premises for the purpose of repossessing unpaid goods. The right to repossess is without prejudice to any other rights of recovery otherwise available. Until such time as all goods supplied by the Company to the Customer are paid in full the relationship of the Customer to the Company shall be fiduciary in respect of the goods and accordingly, the Customer, if required by the Company, shall store the goods in such way that they can be recognised as the property of the Company and that if the goods are sold by the Customer, the Company shall have the right to trace the proceeds thereof. It is not intended by these terms and conditions to create a charge or trust over the goods or over the proceeds of their sale and any such charge or trust shall be severed without affecting the validity of the other terms and conditions.

INSTALLATION – Any times quoted by the Company for installation are estimates only. Where the Company agrees to install goods at any premises (the premises)

- (a) The Customer will provide prepared openings (unless expressly agreed not to do by the Company and noted accordingly on any quotation) and reasonable access, electricity and other services for the Company, its servants or agents and sub-contractors to the premises during the period of installation as may be necessary to enable the Company to install the goods.
- (b) The Company shall not be liable for any loss, damage or expense of any nature whatsoever or howsoever incurred as a result of any;
 - (i) Failure or delay in performing any of its obligations under the order/contract due to any reason beyond the control of the Company.
 - (ii) Prohibition or restriction under any applicable statute, by-law or regulation.
- (c) Any existing defects discovered by the Company in the course of installation shall be the responsibility of the Customer and the Company shall be the sole judge in respect of determining what remedial action is required. The Company may terminate any installation work if the remedial action is not taken as instructed and within the time specified by the Company without prejudice to its existing rights. Any additional expense incurred by the Company as a consequence of any defect shall be at the cost in all things of the Customer which sum shall immediately become due and owing to the Company by the Customer.
- (d) The Company shall not be liable for any filling, painting or any other finishing in and around any opening unless specifically agreed.

SUB-CONTRACTING – The Company reserves its right to sub-contract the manufacture, supply or delivery of any goods or services.

PAYMENT – Payment for all goods purchased from the Company is payable without deduction on delivery unless a credit account for the Customer has been approved by the Company, in which event payment is due on or before the last working day of the month following delivery (or the date of the relevant invoice whichever is the later) and;

- (a) Payment must be prompt and in full and notwithstanding any previous indulgences; and
- (b) If payment is not received by the Company as noted above, the Customer shall pay to the Company;
 - (i) An account keeping fee of \$25 per calendar month or part thereof that the default shall continue;
 - (ii) Interest at the rate of one per-centum (1%) per calendar month or part thereof on the balance due and owing at the beginning of the month of the raising of an invoice; and
 - (iii) All expenses (including any amount charged to the Company by a debt collection agency or legal firm) incurred in recovering or attempting to recover an overdue amount (which sum shall attract interest as noted above)

DEFAULT OF CUSTOMER – If the Customer makes default in any payment, commits any act of bankruptcy, has liens placed on a project or assets frozen or restrained, or becomes subject to any form of external administration or an application for any form of external administration is made, the Company may, in its absolute discretion, withhold further deliveries and/or cancel the contract without prejudice to its rights to recover any amounts due to the Company by the Customer for goods due under the contract.

IMPLIED TERMS – All terms, conditions, warranties expressed or implied by statute, the common law, equity, trade, custom, or usage or otherwise are expressly excluded to the maximum extent permitted by law

WARRANTY – The Company;

- (a) Warrants that all goods (and their components) manufactured by it will be free from defects in materials and workmanship under normal use and service;
- (b) In relation to goods the subject of an order for less than \$40,000, acknowledges that the goods come with guarantees that cannot be excluded under Australian Consumer Law. You are entitled to replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure;
- (c) Will investigate and determine, in its discretion, whether the goods and their components are defective;
- (d) The liability of the Company under this condition is limited as detailed in the following clause (Liability and Indemnity). All other costs, including cartage and installation, must be paid for by the purchaser;
- (e) Whilst goods are in the custody of the Company for investigation or repair they will be at the risk of the purchaser and the Company will not be liable for any damage to the goods;
- (f) Will use its reasonable endeavours to obtain for the purchaser the benefit of any applicable manufacturer's warranty in respect of goods not manufactured by the Company.

LIABILITY and INDEMNITY –To the maximum extent permitted by law, the liability of the Company, howsoever arising, is limited, at the Company's option, to

- (a) the replacement or repair of the goods;
- (b) the supply of equivalent goods; or
- (c) the costs of replacing or repairing the goods or of acquiring equivalent goods.

The purchaser agrees to release, hold harmless and indemnify the Company from and against any liability whatsoever and howsoever arising in connection with the use of the goods by the purchaser.

FIXING by the CUSTOMER – To the maximum extent permitted by law, the Company shall not be liable for any failure by the Customer to fix or install goods in accordance with any advice, recommendation, specification, information, assistance or trade custom.

INDIRECT LOSS – To the maximum extent permitted by law, the Company is not liable in any way for any indirect or consequential loss including loss of profit, revenue, reputation or opportunity, in contract, tort (including negligence) or otherwise arising in connection with the contract or goods supplied under any contract.

NO LIMITATION on STATUTORY RIGHTS – Nothing in these terms and conditions purports to have or has the effect on excluding, limiting or modifying any rights, entitlements or remedies that may be conferred on a purchaser under the Competition and Consumer Act 2011 to the extent that those rights, entitlements or remedies cannot be excluded or modified by agreement.

WAIVER – Failure by the Company to insist on the strict performance of any term, warranty or condition will not be taken as a waiver of it or any rights the Company may have and no waiver will be taken as a waiver of any subsequent breach of any term, warranty or condition.

CONFIDENTIALITY – The Purchaser must keep any contract confidential.

VARIATION - The Company reserves its right to vary these terms and conditions at any time without notice.

PERSONAL PROPERTIES SECURITIES ACT 2009 (Cth) – PPSA

- (a) Defined terms used in this clause have the same meaning given to them in the PPSA.
- (b) the Company and the Purchaser acknowledge that a contract constitutes a Security Agreement and gives rise to a Purchase Money Security Interest (PMSI) in favour of the Company over the goods supplied to the purchaser, as Grantor, pursuant to a contract, and over the Proceeds (including any sale monies or an account for such monies and insurance monies).
- (c) The goods supplied or to be supplied under a contract fall within the PPSA classification of "Other Goods" acquired by the purchaser pursuant to these conditions.
- (d) The purchaser acknowledges that the Company, as Secured Party, is entitled to register its interest in the goods supplied or to be supplied to the purchaser, as Grantor, under a contract on the PPSA Register as Collateral.
- (e) The purchaser waives its right to any of the following under the PPSA;
 - (i) receive notification of or a copy of any Verification Statement confirming registration of a Financing Statement or a Financing Change Statement relating to a Security Interest granted by the purchaser, a grantor, to the Company;
 - (ii) receive notice of removal of an Accession under section 95;
 - (iii) receive notice of an intention to seize Collateral under section 123;
 - (iv) receive notice of disposal of Collateral under section 130;
 - (v) receive Statement of Account if there is no disposal under section 130(4);
 - (vi) receive notice of retention of Collateral under section 135;
 - (vii) redeem the Collateral under section 142;
 - (viii) reinstate the Security Agreement under section 143;
 - (ix) object to the purchase of the Collateral by the Secured Party under section 129;
 - (x) receive a Statement of Account under section 132(3)(d) following a disposal showing the amounts paid to other Secured Parties and whether Secured Interests held by other Secured Parties have been discharged.
- (f) The Purchaser agrees that, to the extent permitted by law, nothing in sections 130 to 143 of the PPSA will apply to, or the Security under, these conditions.

