
INSTOCK WINDOWS PTY LTD

TERMS AND CONDITIONS OF SALE

Table of contents

1.	Definitions.....	1
2.	Interpretation.....	2
3.	General.....	3
4.	Quotations	3
5.	Orders.....	4
6.	Variations.....	5
7.	Invoicing and payment	5
8.	Additional Charges.....	7
9.	Ability to supply	7
10.	Collection	8
11.	Delivery.....	8
12.	Title and risk	10
13.	Warranty and guarantees.....	12
14.	Liability.....	14
15.	Disclaimer	14
16.	Termination.....	15
17.	Default by Customer	15
18.	Exclusions and limitation of liability	16
19.	Indemnity	17
20.	Intellectual Property Rights	17
21.	Privacy.....	17
22.	Dispute resolution	18
23.	Governing Law.....	18
24.	Force majeure.....	19
25.	Notices.....	19
26.	Personal Property Securities Act 2009 (“PPS ACT”)	19
27.	Production specification	21
28.	Miscellaneous	21

TERMS AND CONDITIONS OF SALE

These are the entire Terms and Conditions of Sale of all goods, merchandise and services (**Goods**) supplied by Instock Windows Pty Ltd and any associated and related companies or businesses and its subsidiaries trading under various business names (all of which are referred to as **Instock Windows Pty Ltd**) to any person, firm or company placing an order with Instock Windows Pty Ltd for the purchase of any Goods (**Customer**). Except as otherwise expressly agreed upon in writing between a duly authorised officer of Instock Windows Pty Ltd and the Customer, these Terms and Conditions shall apply notwithstanding any provisions to the contrary which may appear on any order form or other document issued by any Customer, or any other contract executed by the Customer and Instock Windows Pty Ltd. Any supply of Goods by Instock Windows Pty Ltd to the Customer made after the date of acceptance of these Terms and Conditions is a supply pursuant to the supply agreement constituted by these Terms and Conditions and the relevant order accepted by Instock Windows Pty Ltd in respect of any such supply does not give rise to a new or separate Agreement.

1. Definitions

- 1.1. "Additional Charge" means
 - 1.1.1. fees or charges for additional work performed at the Customer's request or reasonably required as a result of the Customer's conduct, calculated in accordance with the Supplier's then current prices; and
 - 1.1.2. expenses incurred by the Supplier, at the Customer's request or reasonably required as a result of the Customer's conduct.
- 1.2. "Business Day" means a day that is not a Saturday, Sunday or any other day which is a public holiday or a bank holiday in the place where an act is to be performed or a payment is to be made.
- 1.3. "Contract" means the contract for the sale of the Goods and the supply of the Services specified in the Order and subject to these terms and conditions of sale.
- 1.4. "Courts" means, in relation to a Jurisdiction, those courts and tribunals exercising jurisdiction in that Jurisdiction, including any competent Federal court exercising jurisdiction in that Jurisdiction.
- 1.5. "Customer" means any person, firm or company placing an order with the Supplier for the purchase of any Goods and to whom the Quotation is addressed and/or any person who accepts the Quotation.
- 1.6. "Glass" means Goods made out of glass and the components of glass within an the Supplier Good, including splashbacks, mirrors, glass components of windows and doors, and glass components of shower screens. This definition of Glass does not include IGU or THS, which have their own separate meaning.
- 1.7. "Goods" means the Goods, merchandise, and services the subject of the Quotation.
- 1.8. "IGU" means insulated glass units.
- 1.9. "Intellectual Property Rights" means intellectual property rights at any time protected by statute or common law, including copyright, trade marks, patents and registered designs.
- 1.10. "Inter-related account" means an account where:
 - 1.10.1. the relevant Customer or guarantor(s) are the one and the same as those of another account held with the Supplier; or
 - 1.10.2. is an account where:

-
- 1.10.2.1. the Customer or its guarantor(s) are a “related entity” of a second Customer holding an account with the Supplier; or
 - 1.10.2.2. The guarantor(s) of the second Customer are a “related entity” to the relevant first Customer or its guarantor(s) for the purposes of the Corporations Act 2001.
 - 1.11. Loss includes, but is not limited to, costs (including party to party legal costs and the Supplier’s legal costs), expenses, lost profits, award of damages, personal injury and property damage.
 - 1.12. “Order” means the acceptance of the Quotation in whole or in part by the Customer.
 - 1.13. “Person” includes companies.
 - 1.14. PPS Law means:
 - 1.14.1. the Personal Property Security Act 2009 (Cth) (**PPS Act**) and any regulation made at any time under the PPS Act (each as amended from time to time); and
 - 1.14.2. any amendment made at any time to any other legislation as a consequence of a PPS Law.
 - 1.15. “Quotation” or “Quote” means the document issued by the Supplier outlining its estimate of the cost for the provision of specified Goods and Services.
 - 1.16. “Services” means the Services, if any, to be supplied with the Goods and the subject of the Quotation.
 - 1.17. “Supplier” means Instock Windows Pty Ltd specified as the supplier of Goods or Services on the Quotation.
 - 1.18. THS” means toughened and heat strengthened glass goods.

2. Interpretation

- 2.1. In these terms and conditions, unless the context otherwise requires:
 - 2.1.1. a reference to writing includes email and other communication established through the Supplier's website (if any);
 - 2.1.2. the singular includes the plural and vice versa;
 - 2.1.3. a reference to a clause or paragraph is a reference to a clause or paragraph of these terms and conditions;
 - 2.1.4. a reference to a party to these terms and conditions or any other document or arrangement includes that party's executors, administrators, successors and permitted assigns;
 - 2.1.5. where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
 - 2.1.6. headings are for ease of reference only and do not affect the meaning or interpretation of these terms of trade; and
 - 2.1.7. if the date on which any act, matter or thing is to be done falls on a day which is not a Business Day, that act, matter or thing:
 - 2.1.8. if it involves a payment other than a payment which is due on demand must be done on the preceding Business Day; and
 - 2.1.9. in all other cases, must be done on the next Business Day.

3. General

- 3.1. These terms and conditions apply to all transactions between the Customer and the Supplier relating to the provision of Goods and Services. This includes all quotations, contracts and variations. These terms and conditions take precedence over terms and conditions contained in any document of the Customer or elsewhere.
- 3.2. The variation or waiver of a provision of these terms or a party's consent to a departure from a provision by another party is ineffective unless in writing signed by the parties.
- 3.3. The Supplier may amend any details in a Quotation by notice in writing to the Customer. Such amended details supersede any relevant prior detail in dealings between the parties.
- 3.4. Obligations and rights under these Terms and Conditions cannot be assigned or transferred to any third party without the Supplier's written consent.

4. Quotations

- 4.1. The Supplier may provide the Customer with a Quote. Any Quote issued by the Supplier is valid for thirty (30) days from the date of issue. The Supplier reserves the right to vary the prices after lapse of thirty (30) days to the extent permitted by law
- 4.2. Unless otherwise expressly agreed in writing, a Quote does not include delivery or installation of the Goods.
- 4.3. Quotes are based upon the cost of materials available at the time of preparation of the Quote and assume the timely supply by the Customer of necessary material and instructions to the Supplier.
- 4.4. Following provision of a Quote to the Customer, the Supplier is not obliged to commence work until the Quote has been accepted by the Customer. This occurs by the Customer completing an Order form and returning the form to the Supplier.
- 4.5. The Supplier reserves the right to amend any Quote before the Order has been completed to take into account any rise or fall in the cost of completing the Order. The Supplier will notify the Customer of any amendment as soon as practicable, at which point the amended Quote will be the estimate or Quote for the purposes of these terms and conditions.
- 4.6. An indication in a Quote of the time frame for the provision of the Goods or Services is an estimate only and is not a fixed time frame. Subject to any obligations in respect of consumer guarantees under the Australian Consumer Law, this estimate is not binding upon the Supplier.
- 4.7. The quoted price is based upon the particular specifications of the Goods current at the time of Quotation. The Supplier reserves the right, to the extent permitted by law, to vary the price and the Customer agrees to pay such varied price if:
 - 4.7.1. there is any variation in specification after the Order is placed; or
 - 4.7.2. additional costs are incurred by the Supplier from the imposition of a special site allowance, or allowances applying to a project of which the Supplier was not advised of in writing before the date of the Quotation or where special site allowances that apply to a project have not been allowed for. Such additional costs relating to new or additional site allowances must be paid

-
- for by the Customer to the Supplier as amounts payable in addition to the sum stated in the Agreement;
- 4.7.3. the invoice price or contract price is varied as a consequence of currency fluctuations, taxes, customs duty or other imposts. Notwithstanding any other clause of these terms and conditions of sale, if any supply by the Supplier is subject to Goods and Services Tax (GST), the Customer must, unless the price on the Quotation expressly states that GST is included, pay an additional amount to the Supplier. The additional amount:
- 4.7.3.1. is equal to the price payable by the Customer for the relevant supply multiplied by the prevailing GST rate; and
- 4.7.3.2. is payable at the same time and in the same manner as the price for the supply to which the additional amount relates.
- 4.8. The Customer must pay to the Supplier all charges, duties, imposts, taxes (including any goods and services taxes and sales taxes) and similar amounts payable in relation to the sale or supply of any Goods or services by the Supplier to the Customer.
- 4.9. The Customer is not entitled to make any claim upon the Supplier if any amounts are outstanding from the Customer to the Supplier. The Customer is not entitled to set off any amounts against any amounts owed by the Customer to the Supplier unless specifically agreed to by the Supplier in writing. The Supplier may at any time set off amounts owed by the Supplier to the Customer against any sums owed by the Customer to the Supplier.

5. Orders

- 5.1. Any person who accepts the Quotation warrants he is the duly authorised agent of the Customer for the purpose of placing the Order. An Order is deemed to have been accepted by the Customer upon the signing of the Quotation and/or payment of a deposit. By accepting the Order the Customer is deemed to have read and understood the Supplier terms and conditions of sale.
- 5.2. Any costs incurred by the Supplier in reliance on incorrect or inadequate information provided by the Customer in an Order may result in the imposition of an Additional Charge.
- 5.3. No quotation by the Supplier shall constitute an offer.
- 5.4. The Supplier reserves the right to accept a part order by notifying the Customer in writing or by delivering the Goods to the Customer.
- 5.5. The Supplier may in its absolute discretion refuse to provide Goods or Services where:
- 5.5.1. Goods are unavailable for any reason whatsoever;
- 5.5.2. credit limits cannot be agreed upon or have been exceeded; or
- 5.5.3. payment for Goods or Services previously provided to the Customer or any related corporation of the Customer or to any other party who is, in the reasonable opinion of the Supplier, associated with the Customer under the same or another supply contract, has not been received by the Supplier.
- 5.6. The Customer acknowledges that the Supplier has no obligation to agree to provide, or continue to provide any credit facilities to the Customer. The Customer is not entitled to any credit facilities until it receives notice the Supplier to that effect

and the Supplier may at any time by notice to the Customer reduce, vary or terminate any such credit facilities. Any credit limit that may apply from time to time in respect of credit facilities is for the administrative convenience and solely for the benefit of the Supplier and such credit limit does not constitute a term of this agreement nor of any Deed of Guarantee, Indemnity and Charge in respect of the obligations of the Customer.

- 5.6.1. Should the Supplier exercise its rights under clause 5.5 to reduce, vary or terminate any such credit facilities the Supplier may refuse to deliver further Goods to the Customer unless such Goods are paid by the Customer in cash before delivery.
- 5.7. The Customer must check all details of the Goods in the Quotation and/or Order form in relation to quantities, description, sizes, dimensions, colour, glass (if not clear float) and accessories. Unless otherwise represented by the Supplier, to the extent permitted by law, the Supplier will not be liable for any incorrect details of the Goods in relation to quantities, description, sizes, dimensions, colour, glass (if not clear float) and accessories.
- 5.8. An Order cannot be cancelled without the prior written consent of the Supplier. Where an Order is cancelled, the Customer indemnifies the Supplier against any Losses incurred by the Supplier as a result of the cancellation. This includes, but is not limited to, loss of profit from other orders foregone as a result of the scheduling of the Order which is subsequently cancelled.

6. Variations

- 6.1. The Customer may request that its Order be varied by providing a request in writing to the Supplier. A request for a variation must be agreed to in writing by the Supplier in order to have effect.
- 6.2. If the Customer wishes to vary its requirements after a Quote has been prepared by the Supplier or after the placement of an Order, the Supplier reserves the right to vary the Quote to include any Additional Charge in respect of any extra costs incurred or additional work carried out due to the variation, in accordance with its then current charge rates. A revised Quote issued by the Supplier in respect of the requested variation supersedes the original Quote. If the revised Quote only specifies additional work, the Quote for that additional work will be in addition to the immediately preceding Quote for the Goods or Services or both.
- 6.3. The Supplier has an automatic extension of time for the provision of the Goods or Services equal to the delay caused by the variation.

7. Invoicing and payment

- 7.1. Unless the Supplier otherwise determines, all payment must be made in full before delivery is due
 - 7.1.1. The Supplier is not required to deliver the Goods until the Customer has paid the Price in full.
 - 7.1.2. Payment will be due before delivery.
 - 7.1.3. Time for payment is of the essence.
- 7.2. The amount payable by the Customer will be the amount set out in the invoice. This will be calculated as:

-
- 7.2.1. the amount for the Goods or Services (or both) as set out in the Quote and any Additional Charges, or
 - 7.2.2. where no Quote has been provided by the Supplier, the Supplier's usual charges for the goods or services (or both) as described in the Order.
 - 7.3. Unless otherwise agreed in writing by the Supplier, all invoices and statements will be issued by email, to the email address nominated by the Customer. If the Customer requests that the invoices and statements are to be sent to it by post, in hardcopy paper form, the Supplier reserves the right to charge the Customer a paper account fee per month. It is agreed between the parties that this fee is agreed as the liquidated cost of issuing a paper invoice. The fee is payable simultaneously with the account invoice to which it relates to.
 - 7.4. The Customer must pay an invoice issued by the Supplier to the Supplier within three (3) days of the Customer being notified to collect the Goods. Delivery will be arranged upon the invoice is fully paid.
 - 7.5. If any invoice is due but unpaid, the Supplier may withhold the provision of any further Goods or Services until overdue amounts are paid in full.
 - 7.6. The Supplier may in its complete discretion apply any payment received from the Customer to any amount owing by the Customer to the Supplier.
 - 7.7. The Customer is not entitled to retain any money owing to the Supplier notwithstanding any default or alleged default by the Supplier of these terms of trade, including (but not limited to) the supply of allegedly faulty or defective Goods, provision of Services to an inadequate standard or a delay in the provision of Goods or Services. Nothing in this paragraph affects the Customer's rights for any alleged failure of a guarantee under the Australian Consumer Law
 - 7.8. The Customer is not entitled to defer, offset or withhold payment in whole or in part for any reason unless agreed to by the Supplier in writing. Customers who have overdue accounts are precluded from participating in any special deals, discounts, bonus payment redemptions, rebates and all other incentive programs until their accounts are paid up to date.
 - 7.9. The Supplier may, at its absolute discretion, charge interest on all overdue accounts at the published monthly Reserve Bank of Australia cash rate plus two (2) percent per month calculated and payable daily, compounded from the due date until the invoice is paid in full.
 - 7.10. The Supplier will charge a reasonable administration fee for any payment made by credit card and the amount to be charged will be advised to the customer at the time of placing the order. If the Supplier is required to deviate from the Quotation in order to fulfil the Order, the Supplier may, in its absolute discretion, charge the Customer to the fullest extent permitted by law for any additional costs incurred the Supplier in so doing. A certificate signed by an authorised representative of the Supplier shall be prima facie evidence of the amount of indebtedness of the Customer to the Supplier at that time.
 - 7.11. The Customer is liable to pay to the Supplier and the Supplier may recover in full from the Customer all costs, expenses and disbursements incurred and / or payable by the Supplier (including debt collection agency fees and legal costs on a solicitor/client basis) arising from or as a result of the Supplier's exercising or enforcing or seeking to exercise or enforce a right under these Terms and Conditions or the accompanying Deed of Guarantee, Indemnity and Charge, and in particular, in collecting or attempting to collect amounts due to the Supplier. Such costs, expenses and disbursements may be recovered by the Supplier from the Customer as a liquidated debt. The Supplier may apply payments received from the

Customer firstly to any costs, expenses and disbursements, then to interest and then to other amounts owed by the Customer.

- 7.12. Where the Supplier, in its absolute discretion, determines that any one or more inter-related accounts is non-compliant with the Terms of Payment under clause 7 of these Terms and Conditions then the Supplier may elect to suspend the supply of Goods and/or cancel any or all inter-related accounts whereby invoices rendered to all inter-related accounts shall become immediately due and payable to the Supplier.
- 7.13. The Customer and the Supplier agree to comply with their obligations in relation to Goods and Services Tax (GST) under the A New Tax System (Goods and Services Tax) Act 1999 and any other applicable legislation governing GST.

8. Additional Charges

- 8.1. The Supplier may require the Customer to pay Additional Charges in respect of Costs incurred by the Supplier as a result of reliance on inadequate or incorrect information or material provided by the Customer or information or material supplied later than required by the Supplier in order for it to provide the Goods or Services within the specified time frame (if any).
- 8.2. The imposition of Additional Charges may also occur as a result of:
- 8.2.1. cancellation by the Customer of an Order where cancellation results in Loss to the Supplier;
 - 8.2.2. storage costs for Goods not collected from the Supplier within eight (8) weeks of the date on which the Goods are ready to collect. The storage costs for Goods shall be calculated as 0.08% of the valuation of the Goods per day.
 - 8.2.3. photocopying, courier, packing or handling charges not included in the Quote;
 - 8.2.4. Government or council taxes or charges not included in the Quote; or
 - 8.2.5. additional work required by the Customer or any other occurrence which causes the Supplier to incur costs in respect of the Customer's Order additional to the quoted cost.

9. Ability to supply

- 9.1. Any obligation of the Supplier to supply Goods or Services is subject to its ability to secure labour, materials and other Services for the manufacture and supply of the Goods and Services.
- 9.2. The Supplier shall not be liable in any way for failure to deliver the Goods and/or supply the Services within the stated time and the Customer may not reject the Goods and/or Services nor will they be relieved from any obligation to pay for the Goods on account of such failure to deliver within the stated time.
- 9.3. The Supplier shall not be liable for any failure to supply or deliver the Goods or Services due to strikes, fires, explosions, flood, riot, lock-out, injunction, and interruption of transportation, accidents, war, governmental action or other circumstances beyond the Supplier's control.
- 9.4. If for any reason the Supplier is unable to perform its obligations under the Contract, then the Supplier may at any time by notice in writing to the Customer terminate the Contract whereupon the Contract will be at an end and any deposit money paid by

the Customer will be refunded by the Supplier and save for the recovery of the deposit neither party will have any claim against the other

10. Collection

- 10.1. Upon the payment in full and the notice from the Supplier, Customers are at liberty to collect the Product ordered from The Goods premises or arrange for their own courier to collect the same.
- 10.2. The Supplier may require the Customer to verify their identity upon collection.
- 10.3. Customers are requested to collect the Goods within 14 days after the Supplier informs the Customers that the Goods is ready for collection.
- 10.4. If the Customers elect to not collect the Goods, the Supplier would allow eight (8) weeks of free storage, and additional charges apply thereafter in accordance with clause 8.
- 10.5. In the event of failure to collect by the Customer in twenty (20) weeks, in the absence of any arrangements made with The Supplier for late collection, The Supplier will assume the Customer has cancelled the order. The Supplier may then re-sell the Goods ordered by the Customer and the Customer may forfeit the payment made for the same.

11. Delivery

- 11.1. The Customer authorises the Supplier to deliver Goods to the place nominated by the Customer and to leave the Goods at such place whether or not any person is present to accept delivery. The Supplier shall not be liable on any basis whatsoever for loss suffered by the Customer after delivery to the Customer's nominated delivery address.
- 11.2. By default of the delivery, the Goods will be placed to the flat land at the Customer's nominated delivery address without steps. The Supplier reserves the right to refuse requests from the Customers to deliver the Goods to the address or places where there are steps, or where it is possible or likely to scratch other items. The Supplier is not responsible for any compensation concerning causing scratching to other items in the process of handling the Goods to the Customer. It is the Customer's responsibility to provide reasonable access and ensure no debris on the ground. If traffic control is required, the Customer is responsible for any payment accordingly unless otherwise agreed with the Supplier.
- 11.3. In the event that the Goods is damaged during the process of handling due to the fault of the Supplier, the Supplier has the option to repair or replace the Goods.
- 11.4. The Supplier reserves the right to charge the Customer packing, crating and delivery charges in accordance with the Supplier's current rates as at the date of dispatch. If there is no current rate, then a reasonable delivery charge shall apply.
- 11.5. Delivery of the Goods shall be deemed to occur when they are handed to the Customer or his representative or are delivered to the premises or site or carrier nominated by the Customer and the Goods shall thereafter be at the Customer's risk.
- 11.6. Upon the signing of a delivery docket unless the contrary is noted in that docket, the Goods shall be deemed to have been delivered in good order and condition and if no person is present to sign the delivery docket then the Goods will be deemed to have been delivered in good order and condition.

-
- 11.7. To the extent permitted by law, the Customer may only return Goods if a shortage, damage or other fault at the time of delivery is reported by the Customer to the Supplier within twenty four (24) hours of delivery and confirmed in writing within seven (7) days of such report. Any goods that have been modified at the request of the Customer will not be accepted for return. The Supplier reserves the right at its absolute discretion to charge a restocking fee of 15% of the Purchase Price of any Goods returned, which may be deducted from any refund. The Customer agrees that the restocking fee is a genuine pre-estimate of damages and not a penalty.
- 11.8. The Customer agrees to accept delivery of the Goods or to make alternative delivery arrangements within seven (7) days of the Supplier notifying the Customer that the Goods are available for delivery. To the extent permitted by law, the Supplier reserves the right at its absolute discretion to charge a minimum fee of \$50 plus two (2) percent of the order value per week or part thereof, if the Customer fails to accept or make alternative arrangements for delivery within seven (7) days of being advised that delivery is ready. The Customer agrees that such fee and percent of order value is a genuine pre-estimate of damages and not a penalty.
- 11.9. Written advice to the Customer that Goods are ready for delivery whether in whole or in part shall constitute a tender of the Goods and the terms of payment shall apply. Where the parties have agreed that the Customer will advise the Supplier of a "load date" (being a date for delivery), the Customer must:
- 11.9.1. give sufficient notice of the load date (being not less than the standard published lead time for the Goods to be manufactured and delivered); and
- 11.9.2. ensure that the load date is not more than ninety (90) days after the date of the Order. To the extent permitted by law, the Customer shall be responsible to the Supplier for any extra costs (which term shall include actual costs and imputed costs for storage, handling or demurrage) incurred by the Supplier as a result of failure of the Customer to take delivery of the Goods at the time and place specified. The Supplier will be entitled to a lien over the Goods until such costs have been paid in full.
- 11.10. If the Customer is required to give the Supplier notice of a load date under clause 11.6 and fails to do so within ninety (90) days after placing the Order, the Supplier reserves the right to:
- 11.10.1. review and vary the price payable by the Customer under the Quotation to the extent permitted by law, if the Supplier considers it reasonable to increase those prices to reflect the Supplier's then current prices for such Goods (or equivalent Goods), in which case the Customer must pay the difference on demand; and/or
- 11.10.2. supply to the Customer equivalent Goods to those described in the Quotation but which may contain slight variations in design. Such variations will not materially affect the dimensions, operation or appearance of the Goods. The Supplier must inform the Customer of such variations at the time of delivery of the Goods.
- 11.11. If the Customer fails to accept any part of the Goods which the Supplier has dispatched in conformity with the Contract and such part of the Goods is returned to the Supplier and re-dispatched subsequently, then the Supplier may, to the extent permitted by law, require the Customer to pay on demand a charge equal to double the current delivery charge.
- 11.12. It is the Customer's responsibility on delivery to ensure that all Goods conform to its specification and requirements and no claims will be accepted for defects ascertainable on delivery in respect of Goods not conforming to the Customer's

written specifications and requirements, unless made in writing within fourteen (14) days after delivery.

- 11.13. Any claim by the Customer that any Goods or services invoiced by the Supplier have not been delivered to or received by the Customer must be communicated in writing by the Customer to the Supplier within fourteen (14) days that the Goods or services were invoiced, failing which the Customer will be deemed to have received delivery of the Goods or services.

12. Title and risk

- 12.1. Risk in Goods passes to the Customer immediately upon delivery.
- 12.2. Property and title in Goods supplied to the Customer under these terms of trade does not pass to the Customer until all money (including money owing in respect of other transactions between the Supplier and the Customer) due and payable to the Supplier by the Customer have been fully paid.
- 12.3. Where Goods are supplied by the Supplier to the Customer without payment in full, the Customer:
- 12.3.1. is a bailee of the Goods until property in them passes to the Customer;
 - 12.3.2. irrevocably appoints the Supplier to be its attorney to do all acts and things necessary to ensure the retention of title to goods including the registration of any security interest in favour of the Supplier with respect to the Goods under applicable law;
 - 12.3.3. must be able upon demand by the Supplier to separate and identify as belonging to the Supplier Goods supplied by the Supplier from other goods which are held by the Customer;
 - 12.3.4. must not allow any person to have or acquire any security interest in the Goods;
 - 12.3.5. agrees that the Supplier may repossess the Goods if payment is not made within seven (7) days (or such longer time as the Supplier may, in its complete discretion, approve in writing) of the supply of the Goods; and
 - 12.3.6. the Customer grants an irrevocable licence to the Supplier or its agent to enter the Customer's premises in order to recover possession of Goods pursuant to this paragraph. The Customer indemnifies the Supplier for any damage to property or personal injury which occurs as a result of the Supplier entering the Customer's premises.
- 12.4. Where Goods are supplied by the Supplier to the Customer without payment in full of all moneys payable in respect of the Goods and any Services provided by the Supplier in respect of those Goods, and:
- 12.4.1. the Customer makes a new object from the Goods, whether finished or not;
 - 12.4.2. the Customer mixes the Goods with other goods; or
 - 12.4.3. the Goods become part of other goods (New Goods),
 - 12.4.4. the Customer agrees with the Supplier that the ownership of the New Goods immediately passes to the Supplier. The Customer will hold the New Goods on trust for the Supplier until payment of all sums owing to the Supplier whether under these terms of trade or any other contract have been made. The Supplier may require the Customer to store the New Goods in a manner that clearly shows the ownership of the Supplier.

-
- 12.4.4.1. For the avoidance of doubt, under paragraph 12.4, the ownership of the New Goods passes to the Supplier at the beginning of the operation or event by which the Goods are converted into, are mixed with or become part of other goods.
- 12.5. Despite paragraph 12.3, the Customer may transfer, sell or dispose of Goods, including New Goods, to a third party in the ordinary course of business. This is provided that:
- 12.5.1. where the Customer is paid by a third party in respect of Goods including New Goods, the Customer holds the whole of the proceeds of sale, less any GST, on trust for the Supplier in a separate account, until all amounts owned by the Customer to the Supplier have been paid; or
- 12.5.2. where the Customer is not paid by a third party, the Customer agrees to assign all of its rights against the third party to the Supplier upon the Supplier giving the Customer notice in writing to that effect and for the purpose of giving effect to that assignment the Customer irrevocably appoints the Supplier as its attorney.
- 12.5.3. Where Goods are supplied by the Supplier to the Customer without payment in full of all moneys payable in respect of the Goods and any Services provided by the Supplier in respect of those Goods, the Customer acknowledges that the Supplier has a right to register and perfect a personal property security interest.
- 12.6. If:
- 12.6.1. a PPS Law applies or commences to apply to these terms of trade or any transaction contemplated by them, or the Supplier determines (based on legal advice) that this is the case; and
- 12.6.2. in the Supplier's opinion, the PPS Law:
- 12.6.2.1. does or will adversely affect the Supplier's security position or obligations; or
- 12.6.2.2. enables or would enable the Supplier's security position to be improved without adversely affecting the Customer.
- 12.6.2.2.1. the Supplier may give notice to the Customer requiring the Customer to do anything (including amending these terms and conditions or execute any new Terms and Conditions) that in the Supplier's opinion is necessary, to the maximum possible extent, to overcome the circumstances contemplated in paragraph 12.6.2.1 or improve the security position as contemplated in paragraph 12.6.2.2. The Customer must comply with the requirements of that notice within the time specified in the notice. If having completed everything reasonably practicable as required under this paragraph, in the Supplier's opinion the Supplier's security position or obligations under or in connection with these terms and conditions have been or will be materially adversely affected, the Supplier may by further notice to the Customer cancel these terms of trade. If this occurs, the Customer must pay to the Supplier any money owed to the Supplier by the Customer immediately.
- 12.7. The provisions of this clause apply notwithstanding any arrangement between the parties under which the Supplier or a related body corporate grants the Customer credit.

12.8. The right to on-sell, deal or otherwise dispose of the goods in the normal course of trade may be revoked at any time by the Supplier and shall automatically cease if the Customer does not pay the Supplier, the Customer is unable to pay its debts as they fall due, the Customer ceases or suspends the Conduct of its business or threatens to, execution is levied on any of the Customer's assets, a Receiver is appointed over any of the assets on the undertaking of the Customer or if a winding up order is made against the Customer or if the Customer goes into voluntary liquidation (otherwise than for the purpose of reconstruction or amalgamation) or administration or calls a meeting of, or makes any arrangement or composition with, creditors or commits any act of bankruptcy, or where the Customer is in default of any of its obligations to the Supplier, and all amounts immediately become due and payable.

13. Warranty and guarantees

13.1. Our Goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and 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.

13.2. Warranty Period

GOODS CATEGORY	WARRANTY
Windows (Aluminium)	10 years repair or replacement of the product
Glass	3 years repair or replacement of the product
Hardware	3 years repair or replacement of the product
Moving Parts	3 years repair or replacement of the product
Keys	1 year repair or replacement of the product

13.2.1. The Goods Warranty Period commences from date of delivery.

13.2.2. The Supplier will replace or repair, at its sole discretion, the defective Goods, or parts thereof. Replaced Goods become the Supplier's property.

13.2.3. The Supplier is not responsible for the labour and rectification costs related to the repair or replacement of the Goods.

13.2.4. Installation is acceptance of our Goods. Installation of faulty, warped, chipped or damaged Goods will void our warranty.

13.3. Where you are not a "consumer" within the meaning of the Australian Consumer Law, the guarantees referred to in clause 13.1 do not apply. In addition to any rights or remedies that you the Services are completed within the warranty period outlined in may have under the Australian Consumer Law or any other law, and subject to clauses 13.4 and 13.5, the Supplier warrants that if, the Goods prove defective by reason of faulty workmanship and/or materials or any service is not rendered with due care and skill, in the case of Goods from the date the Goods are delivered or in the case of Services the date the Instock Windows Pty Ltd Group Standard Warranty (Warranty Period). The Supplier will repair or replace the Goods or

Services without charge. The warranty in clause 13.2 does not apply and to the extent permitted by law the Supplier will not be liable:

- 13.3.1. if the Goods have not been properly handled, installed, maintained and operated in accordance with the Supplier's standard specifications and recommendations;
- 13.3.2. if payment has not been received in full for the Goods;
- 13.3.3. in respect of any fault or failure arising from misuse, damage or neglect to the Goods by the Customer
- 13.3.4. goods that unauthorised or licensed agent improperly handles, or use of chemical spray that without the Supplier written permission;
- 13.3.5. any modifications of the Goods which were not authorised in writing by the Supplier;
- 13.3.6. any misuse of the Goods by the Customer or anyone from whom the Customer has legal responsibility (including a minor);
- 13.3.7. improper use or abuse, including excessive heat or moist, excessive pressure, or uneven exposure to weather conditions;
- 13.3.8. accident, fire, lightning, other hazards whether natural or man-made;
- 13.3.9. any use or operation of the Goods outside of the physical, electrical or environmental specifications of the Goods;
- 13.3.10. inadequate or incorrect site preparation;
- 13.3.11. inadequate or improper maintenance of the Goods
- 13.3.12. loss or damages caused by a defective Goods, and any indirect consequential or other loss or damage, subject to your statutory rights
- 13.3.13. the cost of pick up and delivery
- 13.3.14. where the Goods:
 - 13.3.14.1. that the defects are not visible via direct observation from 1.5 meters under natural light;
 - 13.3.14.2. with the gap is less than 1.5mm.
 - 13.3.14.3. with the overall joints are uneven less than 1.5mm.
 - 13.3.14.4. with the flatness is at the distance of 1.5 meters, that less than 2 mm
 - 13.3.14.5. with fading, colour change or damage caused by the external environment due to normal weather conditions (that will cause any coloured surface to fade or darken gradually).
 - 13.3.14.6. for manufacturing standards and tolerances nor industry variations in colour of aluminium, plastic and timber componentry.
- 13.4. The Supplier will not be responsible under clause 13 for additional charges of hanging, painting or other charges arising from the replacement of windows for installation, removal, labour or other costs arising from the replacement of any Glass Goods.
- 13.5. In order to claim under the warranty in paragraph 13.2.4 you must:
 - 13.5.1. Within thirty (30) days of any defect arising, notify the Supplier of the defect in writing (Notification);
 - 13.5.2. Contact the Supplier within the Warranty Period; and

13.6. The Notification must include:

- 13.6.1. your full name, address and telephone number;
- 13.6.2. your original proof of purchase of the item(s) the subject of the defect or Claim;
- 13.6.3. a written description of the defect;
- 13.6.4. where possible, a photograph of the defect; and
- 13.6.5. a written assurance that the Goods have not been damaged, incorrectly assembled, installed or operated, negligently treated or misused.

13.7. The Notification must be made to:

- 13.7.1. the Supplier who supplied the Goods/Services to you; or
- 13.7.2. 256 Whitehorse Road Nunawading 3131 VIC AU, Tel:1300 946 908; or
- 13.7.3. an enquiry through our website(s) at <https://instockwindows.com.au/contact-us/>
- 13.7.4. This warranty does not include the cost of transportation to or from the Supplier.

14. Liability

14.1. Subject to paragraph 13, the only conditions, guarantees and warranties which are binding on the Supplier in respect of the state, quality or condition of the Goods and/or the Services (including advisory Services) are those imposed and required to be binding by statute, including the Australian Consumer Law, and which cannot be excluded. To the extent permitted by law, the liability, if any, of the Supplier arising from the breach of such conditions, guarantees or warranties shall, at the Supplier's option, be limited to and completely discharged in the case of the Goods, either the replacement or the repair the Supplier of the Goods and in the case of the Services, by the supplying of the Services again. The Customer must bear the costs of returning to the Supplier any Goods in respect of which a warranty claim is made. All other conditions, guarantees and warranties whether express or implied by law in respect of the state, quality or condition of the Goods and/or the Services which may apart from this clause be binding on the Supplier are hereby expressly excluded to the fullest extent permitted by law and subject to paragraph 13.1, the Supplier has no liability to any person for any loss or damage of any kind whatsoever including without limitation, for any indirect or consequential loss (including loss of profits, business, revenue, opportunity, goodwill, or loss arising from any failure, breakdown, defect or deficiency in the Goods and/or the Services) arising out of or in connection with the Goods and/or the provision of the Services.

15. Disclaimer

15.1. Except as provided in these terms and conditions and the full extent permitted by the Australian Consumer Law, all express and implied warranties, guarantees and conditions under statute or general law as to:

- 15.1.1. merchantability, description, quality, suitability or fitness of the Goods for any purpose; or
- 15.1.2. design, assembly, installation, materials, workmanship or otherwise, are expressly excluded.

-
- 15.2. The Supplier is not liable for physical or financial injury, loss or damage or consequential loss or damage of any kind arising out of:
- 15.2.1. the supply, layout, assembly, installation or operation of the Goods; or
 - 15.2.2. the Supplier's negligence or other act or omission.

16. Termination

- 16.1. The Contract may be cancelled/varied by the Customer only with the written consent of the Supplier. To the extent permitted by law, the Supplier may require as a condition of its consent that the Customer pay reasonable charges for such cancellation/variation, which take into account expenses incurred by the Supplier to the date of cancellation/variation, including recompense for any commitments made by the Supplier in consequence of the Order and all other losses both actual and prospective, incurred as a result of such cancellation/variation.
- 16.2. The Supplier shall be entitled to suspend delivery of the Goods and / or services or any part thereof and/or terminate the Contract if the Customer is in default.

17. Default by Customer

- 17.1. Each of the following occurrences constitutes an event of default:
- 17.1.1. the Customer breaches or is alleged to have breached these terms and conditions for any reason (including, but not limited to, defaulting on any payment due under these terms and conditions) and fails to remedy that breach within 14 days of being given notice by the Supplier to do so;
 - 17.1.2. the Customer, being a natural person, commits an act of bankruptcy;
 - 17.1.3. the Customer, being a corporation, is subject to:
 - 17.1.3.1. a petition being presented, an order being made or a meeting being called to consider a resolution for the Customer to be wound up, deregistered or dissolved;
 - 17.1.3.2. a receiver, receiver and manager or an administrator under Part 5.3A of the Corporations Act 2001 being appointed to all or any part of the Customer's property and undertaking;
 - 17.1.3.3. the entering of a scheme of arrangement (other than for the purpose of restructuring); and
 - 17.1.3.4. any assignment for the benefit of creditors;
 - 17.1.4. the Customer purports to assign its rights under these terms of trade without the Supplier's prior written consent; or
 - 17.1.5. the Customer ceases or threatens to cease conduct of its business in the normal manner.
- 17.2. Where an event of default occurs, except where payment in full has been received by the Supplier, the Supplier may:
- 17.2.1. terminate these terms and conditions;
 - 17.2.2. terminate any or all Orders and credit arrangements (if any) with the Customer;
 - 17.2.3. refuse to deliver Goods or provide further Services;

-
- 17.2.4. pursuant to clause 12.2, repossess and re-sell any Goods delivered to the Customer, the payment for which has not been received; or
 - 17.2.5. retain (where applicable) all money paid by the Customer on account of Goods or Services or otherwise.
 - 17.2.6. In addition to any action permitted to be taken by the Supplier under paragraph 17.2, on the occurrence of an event of default all invoices will become immediately due and payable
 - 17.2.7. may retain any monies paid by the Customer on account of the Contract other than the security deposit forfeited, as security for any damages awarded to the Supplier for the Customer's default

18. Exclusions and limitation of liability

- 18.1. The Customer expressly agrees that use of the Goods and Services is at the Customer's risk. To the full extent allowed by law, the Supplier's liability for breach of any term implied into these terms of trade by any law is excluded.
- 18.2. All information, specifications and samples provided by the Supplier in relation to the Goods or Services are approximations only and, subject to any guarantees under the Australian Consumer Law, small deviations or slight variations from them which do not substantially affect the Customer's use of the Goods or Services will not entitle the Customer to reject the Goods upon delivery, or to make any claim in respect of them.
- 18.3. The Supplier gives no warranty in relation to the Services provided or supplied. Under no circumstances is the Supplier or any of its suppliers liable or responsible in any way to the Customer or any other person for any loss, damages, costs, expenses or other claims (including consequential damages and loss of profits or loss of revenues) as a result, direct or indirect of any defect, deficiency or discrepancy in the Goods or Services. This includes their form, content and timeliness of deliveries, failure of performance, error, omission, defect, including, without limitation, for and in relation to any of the following:
 - 18.3.1. any Goods or Services supplied to the Customer;
 - 18.3.2. any delay in supply of the Goods or Services; or
 - 18.3.3. any failure to supply the Goods or Services.
- 18.4. Any advice, recommendation, information, assistance or service given by the Supplier in relation to Goods or Services or both, is given in good faith and is believed to be accurate, appropriate and reliable at the time it is given. It is provided without any warranty or accuracy, appropriateness or reliability. The Supplier does not accept any liability or responsibility for any Loss suffered as a result of the Customer's reliance on such advice, recommendation, information, assistance or service.
- 18.5. To the fullest extent permissible at law, the Supplier is not liable for any direct, indirect, punitive, incidental, special, consequential damages or any damages whatsoever including, without limitation, damages for loss of use, data or profits, arising out of or in any way connected with the provision of or failure to provide Goods or Services, or otherwise arising out of the provision of Goods or the Services, whether based on terms of trade, negligence, strict liability or otherwise, even if the Supplier has been advised of the possibility of damages.
- 18.6. The Customer acknowledges that the Goods or Services are not for personal, domestic or household purposes.

-
- 18.7. The Australian Consumer Law may give to the Customer certain guarantees. Where liability for breach of any such guarantee can be limited, the Supplier's liability (if any) arising from any breach of those guarantees is limited with respect to the supply of Goods, to the replacement or repair of the Goods or the costs of resupply or replacement of the Goods or with respect to Services to the supply of Services again or cost of re-supplying the Services again.

19. Indemnity

- 19.1. The Customer indemnifies and keeps indemnified the Supplier, its servants and agents in respect of any claim or demand made or action commenced by any person (including, but not limited to, the Customer) against the Supplier or, for which the Supplier is liable, in connection with any Loss arising from or incidental to the provision of Goods or Services, any Order or the subject matter of these terms of trade including.
- 19.2. This includes, but is not limited to, any legal costs incurred by the Supplier in relation to meeting any claim or demand or any party/party legal costs for which the Supplier is liable in connection with any such claim or demand.
- 19.3. This provision remains in force after the termination of these terms and conditions.

20. Intellectual Property Rights

- 20.1. The specification and design of the Goods (being all intellectual property, including but not limited to, copyright, design right, trade marks or other intellectual property) remains the property of the Supplier.
- 20.2. Where Goods are manufactured to the Customer's specification, the Customer warrants that it owns all Intellectual Property Rights pertaining to its Order for Goods or Services or has a licence to authorise the Supplier to reproduce or use all copyright works or other materials the subject of Intellectual Property Rights supplied by the Customer to the Supplier for the purposes of the Order. Further, the Customer indemnifies and agrees to keep indemnified the Supplier against all Losses incurred by the Supplier in relation to or in any way directly or indirectly connected with any breach of any other Intellectual Property Rights in relation to any material supplied by the Customer, and/or complying with the Customer's specifications
- 20.3. Unless specifically agreed in writing between the Supplier and the Customer, all Intellectual Property Rights in any works created by the Supplier on behalf of the Customer vest in and remain the property of the Supplier.
- 20.4. Subject to payment of all invoices due in respect of the Goods or Services, the Supplier grants to the Customer a perpetual, non-exclusive licence to use the works created or produced by the Supplier in connection with the provision of Goods or Services under these terms of trade for the purposes contemplated by the Order.

21. Privacy

- 21.1. The Customer acknowledges that the Supplier may collect personal and credit information in connection with the Supplier's dealings with the Customer or any Guarantor in accordance with the Supplier's Privacy Statement, Privacy Policy, Credit Reporting Policy and Statement of Notifiable Matters pursuant to the Credit Reporting Code, the Privacy Act 1988 (Cth), the Privacy (Enhancing Privacy Protections) Act 2012, and the Australian Privacy Principles, and the Customer

consents to that information being collected. A copy of the Supplier's Privacy Statement, Privacy Policy, Credit Reporting Policy and Statement of Notifiable Matters will be provided to the Customer upon request in writing, and can be found on our website at <https://instockwindows.com.au/>

22. Dispute resolution

- 22.1. If a dispute arises between the Customer and the Supplier, the following procedure applies:
 - 22.1.1. A party may give another party a notice of the dispute and the dispute must be dealt with in accordance with the procedure set out in this clause.
 - 22.1.2. A party must not commence legal proceedings (except proceedings seeking interlocutory relief) in respect of a dispute unless the dispute has been referred for resolution in accordance with this paragraph.
 - 22.1.3. A party must not oppose any application for a stay of any legal proceedings that may be issued in respect of a dispute pending the completion or termination of the procedure set out in this paragraph.
- 22.2. If a dispute is notified, the dispute must immediately be referred to the parties' respective senior management. Those representatives must endeavour to resolve the dispute as soon as possible and in any event within [insert number] Business Days (or other period as agreed).
- 22.3. Unless otherwise agreed by the parties, any dispute that cannot be settled by negotiation between the parties or their representatives, the parties expressly agree to endeavour to settle the dispute by mediation administered by the Australian Commercial Disputes Centre (**ACDC**) before having recourse to arbitration or litigation. The mediation must be conducted in accordance with the ACDC Guidelines for Commercial Mediation which operate at the time the matter is referred to ACDC. The Guidelines set out the procedures to be adopted, the process of selection of the mediator and the costs involved. The terms of the Guidelines are incorporated into these terms of trade. This paragraph survives termination of these terms of trade.
- 22.4. Notwithstanding the existence of a dispute (including the referral of the dispute to mediation), each party must continue to perform its obligations under these terms of trade.
- 22.5. The parties must hold confidential, unless otherwise required by law or at the direction of a court of competent jurisdiction, all information relating to the subject matter of the dispute that is disclosed during or for the purposes of dispute resolution. The parties acknowledge that the purpose of any exchange of information or documents or the making of any offer of settlement pursuant to this procedure is to attempt to settle the dispute between the parties. No party may use any information or documents obtained through the dispute resolution process for any purpose other than an attempt to settle the dispute between the parties.

23. Governing Law

- 23.1. The Customer agrees that these Terms and Conditions of Sale shall be construed according to the laws of the State or Territory as the Supplier may in its sole discretion determine. Proceedings by either the Supplier or the Customer may be instituted and/or continued in the specific Court in such State or Territory as the Supplier may in its sole discretion determine. Failing such determination the

Customer consents to any proceedings being instituted and heard by any appropriate Court sitting in the State of Victoria applying the laws of that State.

24. Force majeure

- 24.1. If circumstances beyond the Supplier's control prevent or hinder its provision of the Goods or Services, the Supplier is free from any obligation to provide the Goods or Services while those circumstances continue. The Supplier may elect to terminate this agreement or keep the agreement on foot until such circumstances have ceased.
- 24.2. Circumstances beyond the Supplier's control include, but are not limited to, unavailability of materials or components, strikes, lockouts, riots, natural disasters, fire, war, acts of God, Government decrees, proclamations or orders, transport difficulties and failures or malfunctions of computers or other information technology systems.

25. Notices

- 25.1. A notice or other communication to a party must be in writing and delivered to that party or that party's practitioner in one of the following ways:
 - 25.1.1. Delivered personally; or
 - 25.1.2. Posted to their address when it will be treated as having been received on the second business day after posting; or
 - 25.1.3. Sent by email to their email address, when it will be treated as received when it enters the recipient's information system.

26. Personal Property Securities Act 2009 ("PPS ACT")

- 26.1. The Supplier and The Customer hereby acknowledge that these Terms and Conditions of Sale will constitute a 'Security Agreement' for the purposes of the PPS Act. The PPS Act applies to all transactions pursuant to the Terms and Conditions of Sale or otherwise, and that the Goods under these Conditions fall within the PPSA classification of "Other Goods" acquired by the Customer pursuant to these conditions. Only one PPS registration is required for each supply under a continuing contract with a customer
- 26.2. The Customer hereby grants a charge to the Supplier over all and any of their present and after acquired goods and or property ("ALPAAP") as security for all monies, indebtedness and obligations now and in the future owing by the Customer under this Agreement.
- 26.3. The Customer hereby agrees to do all such things and sign all such documents as are necessary and reasonably required to enable the Supplier to acquire a perfected security interest in all goods supplied.
- 26.4. The Customer hereby agrees to provide such information as is required to enable registration of a Purchase Money Security Interest ("PMSI") under the PPS Act.
- 26.5. The Customer hereby acknowledges that it will indemnify the Supplier for any liability and/or for any costs of registration, maintenance, enforcement or discharge or security interest and such other costs and expenses as the Supplier may incur under this Agreement. The Customer hereby agrees that it will not, without notice in writing, change its name, change its structure, status or partnership, or assign or

-
- sell its business to another party, or initiate any change to any registered documentation, or act in any manner which would impact on the registered security interest of the Supplier. No such event shall affect the liability of the Customer named in any applications for credit, until a new application for credit made in the name of the Customer (applicant and/or the new entity) as restructured or changed is received and approved by the Supplier.
- 26.6. The Supplier hereby reserves the right and the Customer agrees that at any time the Supplier, in its sole discretion, can alter this Terms and Conditions, including but not limited to making such amendments, alterations and additions to this Clause and the Terms and Condition as it sees fit, unilaterally by the Supplier giving thirty (30) days written notice to the Customer.
- 26.7. The Supplier may allocate amounts received from the Customer in any manner it determines fit, but in default will apply same first to payment of any unsecured amount owing to the Supplier, next as to any reasonable enforcement expense and then as to any secured balance owing to the Supplier.
- 26.8. The Customer will not (except with the Supplier's written consent) allow to be, or be liable to become, perfected or attached in favour of any person, a security interest or transitional security interest in any of the monies from time to time payable to the Supplier (if any) or otherwise; and whether to a provider of new value or otherwise.
- 26.9. The Customer will not (as against any person who is a "related entity" of the Customer for the purposes of the Corporations Act 2001) without the prior written consent of the Supplier, before or until all monies payable the Supplier in connection with the Agreement is paid in full:
- 26.9.1. exercise a right of contribution or indemnity;
 - 26.9.2. claim the benefit of (for example, by subrogation), or seek priority ahead of, the transfer of or the benefit of a security
 - 26.9.3. the Supplier holds in connection with this Agreement;
 - 26.9.4. try to reduce liability to the Supplier through a set off or counterclaim; or
 - 26.9.5. prove in competition with the Supplier if the Customer is unable to pay debts when due.
 - 26.9.6. seek to perfect or attach in favour of the Customer or another (either jointly or severally) a security interest in any of the Customer's present or after acquired property which would rank in priority to the entitlements of the Supplier.
- 26.10. To the extent permissible at law, the Customer:
- 26.10.1. waives its rights to 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 Customer, as Grantor, to the Supplier.
 - 26.10.2. agrees to indemnify the Supplier on demand for all costs and expenses, including legal costs and expenses on a solicitor/client basis; associated with the;
 - 26.10.2.1. registration or amendment or discharge of any Financing Statement or a Financing Change Statement registered by or on behalf of the Supplier;
 - 26.10.3. agrees they and the Supplier contract out of and that nothing in the provisions of Sections 95, 96, 117, 118, 121(4), 130, 132(3)(d), 132(4), 142

and 143 of the PPSA will apply to these Terms Conditions or the Security under these Terms Conditions;

- 26.10.4. agrees to waive its rights under Sections 95, 123, 129, 130, 130(4); 132(3) (d), 135, and 143 of the PPSA:
- 26.11. The Customer hereby consents and appoints the Supplier to be an interested person and the Customer's authorised representative for the purposes of section 275(9) of the PPSA.
- 26.12. The Supplier may assign or transfer this Agreement and/or any security under the PPSA to a related body corporate at any time by written notice to the Customer. The Customer must not assign or transfer the benefit or obligations of this Agreement without the prior written consent of the Supplier, which the Supplier will not unreasonably withhold.
- 26.13. This PMSI does not lose its priority as a result of the renewal, refinance, consolidation, or restructure of the subject matter of these terms and conditions and any purchase money obligations.
- 26.14. For the purposes of section 20(1) and (2) of the PPSA, and to ensure maximum benefit and protection for the Supplier under the PPSA, the Customer consents to grant the Supplier, as security for the Customer's indebtedness and obligations, a charge over all of the Customers present and after-acquired property.

27. Production specification

- 27.1. It is the Customer's responsibility, in accordance with the relevant Australia Standards, to advise the Supplier in writing of:
- 27.1.1. the window ratings;
 - 27.1.2. design window pressures;
 - 27.1.3. suitable terrain category;
 - 27.1.4. any design specifications; and
 - 27.1.5. the relevant building codes and Australian Standards
 - 27.1.6. ("Building Specifications") applicable to the installation site for all windows, louvres and doors.
- 27.2. Should the Customer fail to advise the Supplier of the Building Specifications in writing, all Goods produced will be suitable for fully sheltered terrains and will sustain the minimum ratings for wind and water.
- 27.3. To the extent permitted by law, the Supplier will not be liable for the non-compliance and/or faulty performance of any windows, louvres or doors where the customer failed to advise the Supplier in writing of the Building Specifications.
- 27.4. The Customer must inform the Supplier on the Order Form as to any specific purposes for which the Goods are to be used.

28. Miscellaneous

- 28.1. If any condition of a Customer's Order, or any contract executed between the customer and the Supplier, conflicts with or purports to vary these conditions, then these conditions shall prevail to the extent of any inconsistency or variation unless otherwise agreed upon in writing.

-
- 28.2. These terms and conditions supersede all oral and written negotiations and communications by and on behalf of either of the parties. The only terms and conditions binding on the Supplier are those contained herein or otherwise agreed to in writing by the Supplier and those, if any, which are imposed and which cannot be excluded by law.
- 28.3. Customer paying deposit to the Supplier is deemed to be accepted these terms and conditions.
- 28.4. In entering into these terms and conditions, the Customer has not relied on any warranty, representation or statement, whether oral or written, made by the Supplier or any of its employees or agents relating to or in connection with the subject matter of these terms and conditions.
- 28.5. Unless otherwise stated in the Quotation, all Glass shall be clear Glass.
- 28.6. It is expressly agreed that any variations in colour or texture of any material used in the Goods shall not be a defect.
- 28.7. If scaffolding and/or hoisting facilities are required for the removal of the Goods from the delivery vehicle or for their installation those facilities shall all be the responsibility of and at the cost of the Customer.
- 28.8. If anything in these terms and conditions or the Contract is unenforceable, illegal or void then it is severed and the rest of these terms and conditions and the Contract remain in force and effect.
- 28.9. A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right.
- 28.10. The Supplier shall not be liable for and the Customer shall indemnify and keep the Supplier indemnified against, any liability and any loss or damage the Supplier may sustain as a result of any breach, act or omission, arising directly or indirectly from or in connection with any breach of any Terms and Conditions by the Customer or its representative.
- 28.11. The Customer agrees not to use any Goods for:
- 28.11.1. part of any aircraft of whatsoever nature; or
 - 28.11.2. any other unintended purpose, unless the Customer or any other person establishes by a complete and comprehensive testing procedure that the Goods are fit for that purpose, and also where reasonable, a qualified engineer certifies that the Goods are fit for that purpose.
- 28.12. These Terms and Conditions are not to be construed to the disadvantage of the party because that party was responsible for its preparation.
- 28.13. The Customer acknowledges and agrees to charge all of the Customer's interest in real property both present and future in order to secure payment of any and all monies which are now or hereafter become due and payable by the Customer to the Supplier and consents to the lodgement by the Supplier of a Caveat or Caveats noting its interest pursuant to such charge. Immediately on the Supplier's request the Customer agrees to execute a mortgage in registrable form in the Supplier's favour over any of the Customer's real property and by reason of this agreement to execute a mortgage in the Supplier's favour the Customer acknowledges the Supplier is an equitable mortgagee in respect of the Customer's land. If the Customer makes this application as Trustee of any Trust including, without limitation, the Trust (if any) described on the front page of any Application or Commercial Credit then:

-
- 28.13.1. The reference to “real property” in this clause includes any real property of the Trust in addition to the Customer’s real property;
- 28.13.2. The Customer warrants that it:
- 28.13.2.1. is the only Trustee of the Trust; and makes this application for the purposes and benefit of the Trust;
 - 28.13.2.2. has the power under the Trust to enter into and observe its obligations under this agreement/application; and
 - 28.13.2.3. has a right to be indemnified out of the assets of the Trust in respect of its obligations under this agreement application.
- 28.14. The Supplier may at any time, and from time to time, alter these Terms and Conditions of Sale as it sees fit, unilaterally by the Supplier giving thirty (30) days written notice to the Customer. Such altered Terms and Conditions of Sale shall apply from the date of alteration as notified by the Supplier. A copy of current Terms and Conditions of Sale can be found on the Supplier’s website <https://instockwindows.com.au>. The Customer acknowledges and warrants that he/she/it will regularly inspect the said website for any updated or altered Terms and Conditions.