

OCEANIA GLASS

TERMS AND CONDITIONS OF SALE

(Subject to the provisions of the Competition & Consumer Act)

CONDITIONS OF QUOTATION & SUPPLY

1. DEFINITIONS AND INTERPRETATION

"Australian Consumer Law" means the *Competition and Consumer Act 2010 (Cth)*.
"Client" means the customer named on the quotation, and if no customer is named, the customer to whom the Goods & Work is supplied.
"Company" means Viridian Glass Pty Ltd trading as Oceania Glass ABN 68 006 904 052.
"Conditions" means these conditions of quotation and supply and any additional matters prescribed on the face of this quotation.
"Consequential Loss" means loss of revenue, loss of profits, loss of anticipated savings or business, loss of data, loss of value of equipment (other than cost of repair), loss of opportunity or expectation loss and any form of consequential, special, indirect, punitive or exemplary loss or damages, however it arises (including as a result of negligence).
"Consumer" has the meaning in the Australian Consumer Law.
"Goods & Work" means the goods to be supplied by the Company and/or the associated work involved in the supply of such goods.
"Loss" means any liability, however it arises (including as a result of negligence) and includes any loss, claim, damage, demand, injury or death and a fine or penalty imposed by a statutory or other authority.
"Rates" means the unit rate shown on the face of this quotation, listed in the current price list or otherwise used to calculate the prices in the quotation.
"Site" means the location for supply / performance of the Goods & Work specified on the face of this quotation or otherwise agreed in writing.

2. AGREEMENT

Except to the extent otherwise explicitly agreed in writing, these Conditions and, if applicable, any relevant credit application completed by the Client (together with any credit guarantees and any applicable product warranties) govern the entire relationship between the Company and the Client in connection with the provision of the Goods & Work and will prevail over any other document. The Company shall, acting reasonably, determine the order of precedence of any inconsistent documents, if an inconsistency arises. The Client acknowledges that it has not relied on any representation, inducement, warranty or promise which is not set out below.

3. VALIDITY

QUOTATIONS AND ORDERS: Quotations given and orders accepted are subject to the following conditions:

- All quotations are valid for **30 days only**; the Company reserves the right to adjust the quoted rates or withdraw this quote (at its election).
- Unless otherwise agreed in writing, quotations given and orders accepted are based on Oceania's rates and costs as at the date of quotation of materials, transport, labour and other costs. The price may be increased by the amount of any increase in the cost to Oceania of any such item or any other factors (including any change in exchange rates) affecting Oceania's cost of supply, production, labour or delivery of the goods.
- Without limiting the generality of the foregoing, any alteration in quantity, sizes, specification, complexity of work or delivery may necessitate an adjustment of prices.
- No order may be suspended, cancelled or amended without Oceania's agreement in writing and the Client shall accept liability for all costs incurred by Oceania, including but not restricted to purchases, stocks, work in progress, labour costs or unrecovered overheads consequent upon the suspension, cancellation or amendment of any order agreed to by Oceania.
- Orders are accepted subject to Oceania's minimum order conditions and manufacturing limitations for various items.

4. EXTENT OF GOODS & WORK

This quotation is based on supply / performance of all of the Goods & Work at the Site. The Client acknowledges that in the event the Company is required to estimate the quantity of Goods required by the Client, the Company's estimate shall be calculated with reasonable care based on the information submitted to the Company. The Company shall not be responsible for any discrepancies or errors in quantities suggested or other advice given and the Company expressly disclaims any liability with respect to such estimates and advice. Should the quantities supplied or location of the Site vary from the quotation the Company reserves the right to adjust the Rate.

5. MANUFACTURING CAPABILITIES, WARRANTIES, QUALITY, TEMPLATES AND SPECIFICATIONS

The Client acknowledges the existence of various guidelines made available by the Company dealing with the Company's manufacturing capabilities, warranties, quality, specifications, delivery charges, template charges and storage fees (including without limitation, those made available on the Company website) ("**the guidelines**"). The Client indemnifies the Company in respect of any non-compliance, or failure to act, by the Client (including without limitation, its agents and subcontractors) in respect of the guidelines.

6. BASIS OF PAYMENT

The Goods & Work will be paid for by the Client at the Rates according to the actual quantities supplied as evidenced by the Company's delivery records. The Client acknowledges that the Rates are subject to change at any time at the Company's absolute discretion. The Client acknowledges that the Goods & Work will be paid for in full without any retention, set-off or back-charges and, that the Company is under no obligation to accept returned materials. Goods & Work credited are at the absolute discretion of the Company and may be subject to handling and freight return charges.

7. LIMITATION OF LIABILITY AND INDEMNITY

If the Client is not a Consumer, the Company shall not be liable in any circumstances:
(a) for any damage to any property of whatsoever kind situated in, on or adjacent to the Site resulting from Goods & Work supplied or performed in accordance with these Conditions;
(b) for any defects in the Goods & Work unless the Client notifies the Company within the earlier of 72 hours of the date of delivery of the materials, prior to fixing or the supply of the services specifying the defect, which notice shall be a condition precedent to any right to recover by the Client. Claims for credit or replacement after customer secondary processing will not be accepted;
(c) The Client acknowledges that Oceania is not responsible for any related services including but not limited to building engineering, quantity surveying and systems design. The Client acknowledges that it is the Client's responsibility to obtain its own advice and that it has not relied on any recognition from Oceania about these matters.
(d) for any Loss arising from delay;
(e) for any Consequential Loss; and
(f) for any Loss arising from materials supplied by the Company being placed or installed by others, and, subject to clause 6A, the Company's total aggregate liability in all circumstances is limited (to the extent permitted by law) to the amount paid by the Client for the Goods & Work.
To the maximum extent permitted by law, the Client hereby indemnifies and forever holds harmless the Company from all Losses caused or contributed to by any negligent and/or willful act or omission or any breach of these Conditions by the Client, or by the Company arising from supplying or performing the Goods & Work in accordance with these Conditions.

8. LIMITATION OF LIABILITY - AUSTRALIAN CONSUMER LAW GUARANTEES

Unless the Client indicates otherwise, the Client acknowledges that the Goods & Work it will acquire from the Company will be obtained for either the purpose of re-supply (in an altered form or condition or to be incorporated into other goods) or for the purpose of using them up or transforming them in trade or commerce in the course of a process of production or manufacture or in the course of repairing or treating other goods or fixtures on land.

9. SITE ACCESS

Unless otherwise explicitly agreed in writing between the parties, the Company will deliver and the Client will receive the Goods & Work at the street frontage of the Site in a timely manner. The Company may charge waiting time if the carrier is delayed at the Client's site for more than one hour for reasons beyond the carrier's control. If the carrier cannot identify the Client's site because the delivery address is inadequate or not clearly identifiable, the Goods & Work will be returned to the Company and the Client will be charged a re-delivery fee.

10. DELIVERY

The Company will use reasonable endeavours to deliver Goods & Work in accordance with the Client's schedule. However, should supply / performance of the Goods & Work be early or delayed for any reason beyond the control of the Company (including stock unavailability) or as a result of any cause which the Client is or should reasonably have been aware of, all Loss arising from the delay will be the Client's responsibility and the Client shall indemnify the Company in respect of such Loss. All stillages, frames or transportation pallets remain the property of the Company, failure to return will result in replacement charges. (refer to the Oceania Fair Use Policy)

11. SITE VISITS & HOURS

This quotation is based on the delivery and performance of the Goods & Work being conducted during normal hours. At other times additional charges may apply.

12. VARIATIONS

The Company is not obliged to carry out any variation which is outside the scope of the Goods & Work. Any variation request must be in writing and agreed between the parties, including the rate where applicable, and shall be subject to these Conditions.

13. TERMS OF PAYMENT

- Payment for the Goods & Work inclusive of freight, handling and other expenses shall be made within 30 days of the date of the statement where upon that transaction appeared. Time will be of the essence for the performance of the Client's obligation for payment. If at any time monies are overdue and owing upon any Tax Invoice then the whole amount of all invoices than the outstanding shall become immediately due and payable together with the costs of collection of any monies than due and payable including but not exclusively fees of any mercantile agent or solicitor engaged by Oceania shall be recoverable in full against the agent.
- Payment shall be net cash at the end of the month following the month in which Goods & Work are ready for dispatch.
- Oceania accepts payment of accounts by MasterCard or Visa, fees may be applied for credit card payments. The Client agrees and accepts that credit card fees will be charged at a rate that is set by Oceania and at the sole discretion of Oceania.
- The Client shall pay interest at the rate of 1% per month on daily balances in respect of any amounts, as may from time to time be overdue until paid and such money, together with all interest, shall be recoverable from the Client as liquidated debt.
- Oceania reserves the right to vary the terms of payment and total value of credit allowed by notice in writing to the Client at any time and to require payment in cash in full prior to the delivery should the credit worthiness of the Client at any time in Oceania's opinion become unsatisfactory.

14. TAXES & OTHER CHARGES

The prices quoted do not include any statutory or Government charges. Should any such charges or any other tax become applicable they will be charged to and paid for by the Client in addition to this quotation.

15. FORCE MAJEURE

If the performance of any part of the order is prevented by force majeure, the Company shall be excused performance, provided the Company uses its best endeavours to remove such cause(s) of non-performance, and shall continue performance without delay when the cause(s) are removed.

16. INFORMATION

The Client acknowledges and agrees that:

- The Client must provide all relevant information to the Company to enable the Company to supply / perform the Goods & Work; and
- The Company in giving this quotation has relied upon the accuracy and completeness of such information, and the Client hereby warrants to the Company the accuracy and completeness of all information supplied.

17. RISK AND TITLE

Upon delivery of all Goods & Work the subject of these Conditions to the Site, all risk in relation to the Goods & Work shall pass to the Client. Property in the Goods & Work shall not pass to the Client until the Company has been paid in full for the Goods & Work. Oceania retains legal and equitable title in any goods supplied to the Client until payment in full for or in connection with the supply of the relevant goods has been received by Oceania.

18. SAFETY & ACKNOWLEDGMENTS

- The Client is responsible for ensuring safe and adequate access to the Site for delivery and all other aspects of Site safety.
 - The Client shall notify the Company before delivery, of any obstacles or peculiarities in relation to the Site e.g. low-hanging overhead power lines.
 - The driver making any delivery may refuse to complete the delivery if not satisfied with the Client's compliance with (a) and (b) above, however, making a delivery shall not constitute an assessment of the safety of the Site.
- Where the Company leaves equipment on the Site in connection with the supply / performance of the Goods & Work, the Client shall take all reasonable precautions to secure the Site to prevent loss or damage to the equipment or any injury to persons entering upon the Site. Traffic control is the Client's responsibility.

19. GENERAL

(**Severance**) If any provision of these conditions shall be determined by any court to be illegal, invalid, void or voidable the legality of the remaining provisions shall not be affected and the illegal, void or voidable provision shall be deemed deleted and the remainder shall continue in full force and effect.
(**Waiver**) A right may only be waived in writing, signed by the party giving the waiver.
(**Insolvency**) If the Client is or becomes or is presumed to be insolvent (including where any steps are taken by a mortgagee to enter into possession of the Client's assets, or to have a receiver, administrator or liquidator appointed in respect of the Client, or to have the Client declared bankrupt, or enter into any scheme of arrangement), the Company may immediately terminate its engagement under these Conditions.
(**Governing law**) These Conditions are governed by the laws of the State or Territory in which the Goods & Work is supplied / performed. The parties submit to the non-exclusive jurisdiction of the courts of that State or Territory and any courts which may hear appeals from those courts.
(**Insurance**) The Client must take out and maintain those policies of insurance that would be held by a reasonably prudent customer in the position of the Client.
(**No Adverse Interpretation**) These Conditions are not to be interpreted against the interests of a party merely because that party proposed this document or some provision in it or because that party relies on a provision of these Conditions to protect itself.