

TERMS AND CONDITIONS OF TRADE

CONSUMER TERMS



Thank you for choosing Metro Glass. These Terms set out the terms and conditions on which we supply glass and glazing products to you for your residential project. Please read all of the Terms carefully and seek advice if you need it. The summary below highlights some key points, but it is important that you understand the full Terms:

- 🚩 **Your product warranty is provided separately** - please review it carefully as all warranties require registration to become active. Details are available at metroglass.co.nz/resources/warranty.
- 🚩 **Consumer Guarantees** - If you are a consumer, you have rights under the Consumer Guarantees Act 1993 - these Terms do not limit or affect those rights.
- 🚩 **Your contract** - Your Quote, these Terms, and your product warranty document form your contract with us. If you want to make any changes to the details in an agreed Quote, this must be agreed in writing and may incur additional costs.
- 🚩 **Price** - The Price in your accepted Quote is fixed, subject to limited exceptions.
- 🚩 **Payment** - You must pay on time and late payments may incur interest and costs.
- 🚩 **Ownership and risk** - We retain ownership of the Products until you pay all Amounts Owing in full. Risk of loss or damage passes to you on delivery, or when you or your agent collects the Products for delivery.
- 🚩 **Cancellation** - If you request a cancellation, we will do our best to accommodate that request. However, we may charge you for reasonable costs we have already incurred. For example, if you cancel last minute, you may be required to pay for the Products.

1. INTRODUCTION

- 1.1. These Terms apply when we supply glass and glazing products and/or installation or other services to you for your residential project.
- 1.2. When you accept a Quote from us, a contract is formed between us. You can accept a Quote by signing it, approving it electronically or any other method we specify.
- 1.3. Your contract with us consists of these Terms, the applicable Quote and any warranty document (**Order**). If there is any conflict between these documents, they will apply in the order listed in this clause (with earlier documents taking precedence) unless explicitly stated otherwise. Each Order creates a separate contract.
- 1.4. Capitalised terms used in these Terms have the meaning given to them in Clause 15 (*Interpretation*).

2. QUOTES AND ORDERS

- 2.1. Once you accept a Quote, the Price will not change except where you:
 - (a) request, and we agree to, a change; or
 - (b) we notify you of a Change,
 in each case, subject to and in accordance with clause 3 (*Changes to Your Order*).
- 2.2. Unless expressly stated otherwise, prices exclude the following amounts, which are payable by you in addition to the Price: GST, delivery, installation and storage (due to any delay you cause to delivery).
- 2.3. We may withdraw a Quote at any time before you accept the Quote. A Quote is valid for 30 days from issue and will lapse if not agreed within that period.

3. CHANGES TO YOUR ORDER

- 3.1. If you wish to cancel or Change your Order before the relevant Products are delivered to you, you must notify us as soon as possible. Any cancellation or Change is subject to our approval, which we may grant or withhold at our discretion. If we approve a:
 - (a) cancellation, we may charge you for reasonable costs we have already incurred (in some cases, this means you will still be required to pay for the Products); or
 - (b) Change, we may issue a change confirmation and/or a revised Quote. If we issue a revised Quote, you have 10 working days to accept the revised Quote or withdraw your change request and proceed with the original Quote. If you do not respond within that period, you will be deemed to have elected to proceed with the original Quote.
- 3.2. We may notify you of a Change to your Order, or cancel your Order:
 - (a) prior to delivery, if required due to any events outside our reasonable control (including materials or product availability and/or increased freight costs or other costs). If we notify you of a material Change in accordance with this clause 3.2(a), you may cancel your Order on notice to us within 10 working days and we will refund you any deposit you have paid to us for the Order. If you do not cancel the Order within that period, you will be deemed to accept the Change; and
 - (b) at any time, if an Unexpected Adverse Site Conditions occurs. If, in accordance with this clause 3.2(b), we:
 - (i) cancel your Order, we may charge you for reasonable costs we have already incurred (in some cases, this means you will still be required to pay for the Products); or
 - (ii) notify you of a material Change to your Order, you may cancel your Order on notice to us within 10 working days (in which case clause 3.2(b)(i) will apply). If you do not cancel the Order within that period, you will be deemed to accept the Change.

- 3.3. You acknowledge that if we rely on any plans, specifications and measurements provided or approved by you, you are responsible for the accuracy of that information. Any updates to and/or correction of that information will constitute a Change by you in accordance with clause 3.1. We may increase the Price to reflect any Changes required to address any information that is not accurate.

4. PAYMENT

- 4.1. The Price is payable in accordance with the payment terms stated in the Quote or otherwise notified to you by us on the invoice or in writing. If no payment terms are stated, the balance is due by the 20th of the month following the date of our invoice.
- 4.2. Payment must be made by direct credit, electronic transfer, or another method we agree with you. You must pay all Amounts Owing to us by the due date for payment, in full and without set-off or deduction.
- 4.3. If you do not pay on time, we may:
 - (a) charge interest on overdue amounts at a rate of 5% per month, calculated daily from the due date until payment;
 - (b) suspend your Order until you pay the outstanding amounts; and/or
 - (c) set off any amounts we owe you (and, if you are a company, another of your related companies) against amounts you owe us.
- 4.4. If you do not pay within 10 working days following an overdue payment reminder from us, we may cancel your Order, in which case clause 3 will apply on the basis the Order is deemed to be cancelled by you.
- 4.5. If an Insolvency Event occurs, or you cancel (or are deemed to have cancelled) your Order, all Amounts Owing will immediately become

due and payable.

5. DELIVERY AND INSTALLATION

5.1. You acknowledge that all delivery times are estimates only and you agree to accept delivery in instalments.

5.2. We will deliver the Products:

- (a) to the Delivery Address; or
- (b) if no Delivery Address is specified, to our premises – in which case, the Products will be deemed delivered when we notify you that the Products are ready for collection at our premises.

If you do not collect the Products in full within two weeks of the date of any such deemed delivery, we may cancel your Order on notice to you and you will be liable for all costs incurred by us, due to your failure to accept delivery of your Order including reasonable storage costs. Any deposit or other amount you have paid to us for the Order will be forfeited.

5.3. If your Order includes installation, you must notify us of any Adverse Site Conditions. If you notify us of any such Adverse Site Conditions, or we identify any Adverse Site Conditions, after we have provided a Quote (**Unexpected Adverse Site Conditions**), clause 3.2(b) will apply.

5.4. If your Order includes installation:

- (a) we will undertake and complete the installation using reasonable care and skill, and otherwise in accordance with the requirements of your Order;
- (b) we will arrange installation on the date(s) agreed with you (however we may update the installation date(s) on notice to you);
- (c) you are responsible for site access, site readiness any prerequisite work by your builder and for notifying us of any Adverse Site Conditions, unless otherwise agreed in your Order. If we cannot proceed with installation because the site is not ready, or we identify any Adverse Site Conditions that you have not notified to us, we may reschedule and may charge you reasonable additional costs. If we identify any Adverse Site Conditions, clause 3.2(b) will also apply;
- (d) you must ensure that the site is safe and free from hazards prior to installation, and you must notify us of any known hazards, asbestos, or other dangerous materials at the site. You indemnify us against any liability, loss, damage, costs or expenses arising from your failure to comply with this clause;
- (e) we are not liable for any damage to your existing property, structures, fittings or finishes (including frames, reveals, paint, plaster or surrounding surfaces) that may occur during installation, except to the extent caused by our negligence; and
- (f) delivery is complete when we notify you the Products are installed, even if there are minor defects that do not affect use. You must sign off within a reasonable time after we notify you that the work is ready.

5.5. Where the supply or installation of Products is covered by the Construction Contracts Act 2002, nothing in these Terms affects the parties' rights and obligations under that Act.

6. THIRD PARTY SUPPLIERS

6.1. If you authorise us to arrange the provision of Products directly to you and/or installation of Products by a third party supplier (whether or not such arrangement involves us contracting as your agent), to the extent applicable, these Terms shall apply to our services in arranging such supply, provided that we exclude all responsibility and liability in connection with the supply of goods or services to you directly by a third party supplier, including for notification of any Adverse Site Conditions to the relevant supplier.

7. RISK AND OWNERSHIP

7.1. Risk in the Products (including for loss or damage) passes to you on the earlier of delivery (in accordance with clause 5.2 or 5.3(f)) and the time the Products are collected by you or your agent or contractor for delivery. You bear the risk of any damage to Products during transportation.

7.2. The Products (including any parts that can be identified as coming

from the Products, even if processed or attached to other items) remain our property until you have paid all Amounts Owed to us in full. Until ownership passes to you, you hold the Products as bailee for us and must keep them in good condition.

7.3. If you fail to pay any Amount Owed or meet any other obligation, we may require you to return the Products.

7.4. We may apply any payments you make towards any Amount Owed in whatever order we choose.

7.5. If you sell or use any Products before ownership passes to you, you hold the proceeds of sale or use (in whatever form) in trust for us to the extent of the Amount Owed.

7.6. We may bring legal action to recover the Price from you even if ownership of the relevant Products has not yet passed to you.

8. SECURITY INTEREST

8.1. These Terms constitute a Security Agreement creating a Security Interest in the Products and the proceeds of such Products, to secure the payment by you to us of the Amount Owed. This Security Interest in the Products and the proceeds of such Products is a Purchase Money Security Interest.

8.2. You must:

- (a) promptly do all things, sign any further document and/or provide any information which we may reasonably require to ensure we are paid all Amounts Owed and otherwise to protect our interests under these Terms (including by registration of a financing statement and ensuring that we have a first ranking perfected Security Interest in the Products and the proceeds of the Products); and
- (b) give us not less than 14 days prior written notice of any proposed change to your details (including name and address).

8.3. You waive your right to receive a verification statement under section 148 of the PPSA in respect of any financing statement relating to a Security Interest.

8.4. To the extent permitted by law, you and we contract out of:

- (a) sections 114(1)(a), 133 and 134 of the PPSA; and
- (b) your rights referred to in sections 107(2) of the PPSA.

8.5. Each Security Interest is a continuing security, notwithstanding any intermediate payments, settlement of accounts or anything else.

8.6. Nothing in these Terms is to be construed as an agreement that a Security Interest under these Terms attaches at a later time than the time specified in section 40(1) of the PPSA.

8.7. You and the Guarantor must provide us with information and any associated documentation that we reasonably request from time to time relating to your and/or Guarantor's financial status.

8.8. If at any time we consider that your financial status and/or the Guarantor's financial status is unsatisfactory, we may require you and/or Guarantor to grant additional Security Interests as security for the Amount Owed and may suspend further work until you and/or Guarantor has provided such Security Interest.

9. IF YOU DO NOT PAY OR YOU BREACH THESE TERMS

9.1. If an Event of Default occurs, or if the Products are at risk at any time, we may:

- (a) suspend further work until the default is remedied;
- (b) require immediate payment of any Amount Owed;
- (c) exercise any other rights available to us under these Terms or at law; and
- (d) take possession of the Products, enter any premises where the Products are located, and sell or dispose of them. You must obtain any consents required for us to exercise these rights, and you indemnify us against any liability or costs we incur in doing so. We may resell any Products and apply the proceeds to reduce the Amount Owed.

9.2. You must reimburse us for all reasonable costs and expenses (including legal fees on a full recovery basis and debt collection costs) we incur as a result of an Event of Default, including to recover any amounts, obtain any orders required under the PPSA and/or

otherwise enforce our rights under these Terms.

10. WARRANTY AND LIABILITY

- 10.1. We will provide you with a written product warranty for the Products, as stated on our website (metroglass.co.nz/resources/warranty) or as otherwise agreed. Please review your warranty carefully as all warranties require registration to become active.
- 10.2. Subject to your rights under the Consumer Guarantees Act 1993:
- (a) our total liability under these Terms, whether in contract, tort (including negligence), or otherwise, is limited to the Price you paid for the relevant Products and/or Services; and
 - (b) we will not be liable for any loss of profits, loss of savings, loss of opportunity, loss of use, or any indirect, consequential, or special loss or damage.
- Except as set out in these Terms or required by law, all other warranties are excluded.
- 10.3. We will not be liable for any acts or omissions caused by events outside our reasonable control, including strikes, labour disputes, transport delays, difficulty obtaining materials, epidemics or pandemics, government orders or acts of God.

11. CONSUMER GUARANTEES ACT 1993 AND FAIR TRADING ACT 1986

- 11.1. Subject to clause 11.2, nothing in these Terms affects any rights you may have as a "consumer" (as defined under the Consumer Guarantees Act 1993 (**CGA**)).
- 11.2. If Products and/or Services are being supplied to and acquired by you in trade (or you hold yourself out as acquiring the Products and/or Services in trade), you acknowledge and agree that:
- (a) the CGA does not apply to the supply of Products and/or Services under these Terms;
 - (b) for the purposes of section 5D of the Fair Trading Act 1986 (FTA), the parties agree to contract out of sections 9, 12A and 13 of the FTA in respect of all matters covered by these Terms; and
 - (c) you had the opportunity to receive advice from a lawyer prior to contracting on these Terms and agree that it is fair and reasonable to be bound by this clause 11.2.
- 11.3. Where you acquire the Products for the purpose of re-supplying them in trade, you must:
- (a) include a provision in your terms of sale to the effect that to the fullest extent permitted by law the CGA will not apply where a purchaser acquires or holds itself out as acquiring the Products in trade (and you must notify your purchasers of the effect of this clause);
 - (b) indemnify us for and against any liabilities, losses, damages, claims, costs or expenses of whatever kind and nature incurred by us as a result of you failing to take the action required under this clause.

12. PRIVACY

- 12.1. You authorise us to collect, use, and disclose your personal information in accordance with our Privacy Policy (as updated from time to time), available at metroglass.co.nz/privacy-policy (**Privacy Policy**).
- 12.2. If you provide us with personal information about another person (including a Guarantor), you confirm that they have authorised you to share their information with us, and that you have told them that we may collect and use their personal information (in accordance with our Privacy Policy) and their right to access and correct their personal information.
- 12.3. We may carry out a credit check on you or any Guarantor. This involves sharing personal information (including any default information) with a credit reporter, who may keep that information and use it to provide credit reporting services to others.

13. NOTICES

- 13.1. Any notice under these Terms must be sent by email to the address in your Quote or as otherwise notified.
- 13.2. A notice is deemed received on successful transmission (or the next

working day if sent after 5.00 pm or on a day that is not a working day), unless the sender receives an out-of-office reply or notification of unsuccessful delivery.

14. GENERAL

- 14.1. We may amend these Terms from time to time upon notice to you (including by email or by publishing updated terms on our website). By continuing to order Products, you will be deemed to have accepted the updated Terms. Updates will not affect Orders agreed before the update, unless we notify you that the updates are required by applicable law or are not material to you.
- 14.2. You may not assign your rights or obligations under these Terms without our prior written consent. We may assign or transfer our rights and obligations to a related company or successor or in connection with the recovery of any Amount Owed.
- 14.3. The rights and remedies in these Terms are in addition to any rights or remedies provided by law.
- 14.4. Each Order constitutes the entire agreement between us in respect of the Products and/or Services the subject of that Order and supersedes any previous discussions, representations or arrangements relating to those Products and/or Services. You acknowledge that you have not relied on any representation or warranty made by us that is not expressly set out in these Terms, your Quote or any warranty document.
- 14.5. Any advice, recommendation, information, assistance or service provided by us in relation to Products and/or Services or their use is given in good faith but without any liability on our part. You must make your own assessment of the suitability of the Products and/or Services for your intended purpose and you may not rely on any advice provided by us.
- 14.6. We are an independent supplier. Nothing in these Terms creates a relationship of employment, agency, joint venture, or partnership. This clause does not affect the Security Interest created under clause 8.
- 14.7. Any waiver by us of a breach of these Terms must be in writing and does not waive any other breach.
- 14.8. If any provision of these Terms is invalid or unenforceable, it will be severed and the remaining provisions will continue in effect.

15. INTERPRETATION

15.1. Definitions

Adverse Site Conditions adverse site conditions that are relevant to your Order (including structural defects, rot, weather tightness, water damage, or other issues).

Amount Owed means any amount you owe to us from time to time, including the Price payable under any Order and any other amounts payable in accordance with these Terms.

Change means any change to your Order, including to the scope of Products and/or Services, Price, Product specifications or Adverse Site Conditions, in accordance with clause 3.

Customer (or **you**) means the person or persons named in the Quote.

Delivery Address means the delivery or installation address specified in your Quote, or as we otherwise agree in writing.

Event of Default means: (a) any amount you owe us is overdue, or you or any Guarantor fail to meet any other obligation under these Terms; (b) you or any Guarantor suffer an Insolvency Event; or (c) any information you or a Guarantor provided to us is materially false or misleading.

Guarantor means the person named in the Quote, credit application, or other document who agrees to be liable for amounts you owe to us.

Insolvency Event means, in respect of a person: (a) a receiver, liquidator, or similar official is appointed; (b) the person cannot pay their debts when due; (c) the person becomes insolvent or bankrupt; or (d) for an individual, the person is adjudicated bankrupt or enters into a no-asset procedure under the Insolvency Act 2006.

Metro (or **we, us, our**) means Metropolitan Glass and Glazing Limited, trading as Metro Performance Glass, Metropolitan Glass and Glazing, Retro FIT and Metro Direct.

Order has the meaning given to that term in clause 1.3.

PPSA means the Personal Property Securities Act 1999 and capitalised terms used in section 8 and not defined in these Terms have the meaning given to them in the PPSA.

Price means the price for the Products and any other charges as specified in your Quote.

Products means the products specified in the applicable Quote (if applicable, as updated pursuant to a Change).

Quote means the quote or order issued to you by us that forms part of your Order.

Services means installation and any other services specified in the applicable Quote (if applicable, as updated pursuant to a Change).

Terms means these Terms and Conditions of Trade, as updated by us from time to time in accordance with clause 14.1.

Unexpected Adverse Site Conditions has the meaning given to that term in clause 5.3.

15.2. **Construction**

15.3. In these Terms:

- (a) headings are for convenience and do not affect interpretation;
- (b) a reference to a statute includes all regulations under, and amendments to, that statute;
- (c) singular includes plural and vice versa;
- (d) "including" means "including without limitation"; and
- (e) a reference to a party includes that party's successors and permitted assigns.

15.4. These Terms will not be interpreted against us on the basis we prepared them.

15.5. These Terms are governed by New Zealand law and we both submit to the non-exclusive jurisdiction of the New Zealand courts.