



1. AGREEMENT

- 1.1. In this agreement, "**Mt Barker Glass**" means Mt Barker Glass Pty Ltd (A.C.N. 073 874 156).
- 1.2. The agreement for the supply of the Goods and/or Services by Mt Barker Glass to the Customer consists of the following documents:
 - 1.2.1. these Sales Terms;
 - 1.2.2. any Quote;
 - 1.2.3. Credit Application, if approved by Mt Barker Glass;
 - 1.2.4. any Specifications referred to in the Quote;
 - 1.2.5. Customer Price List; and
 - 1.2.6. any variation agreed to in writing between the parties.
- 1.3. If there is any inconsistency between the Sales Terms, Quote, and the Credit Application, then these Sales Terms will prevail to the extent of such inconsistency.
- 1.4. These Sales Terms take precedence over any terms contained in any document of the Customer.

2. ACCEPTANCE OF SALES TERMS

- 2.1. On provision of these Sales Terms to the Customer, the Customer must accept the Sales Terms by returning a signed copy of the Sales Terms to Mt Barker Glass or by reply email confirming its acceptance to the Sales Terms.
- 2.2. Notwithstanding clause 2.1, the Customer is deemed to accept these Sales Terms if the Customer:
 - 2.2.1. places any order for Goods or Services from Mt Barker Glass; or
 - 2.2.2. accepts a Quote; or
 - 2.2.3. makes payment of any Invoice to Mt Barker Glass,after these Sales Terms have been provided to the Customer.

3. QUOTES

- 3.1. Mt Barker Glass may provide the Customer with a Quote.
- 3.2. Any Quote issued by Mt Barker Glass is valid for 30 days from the date of issue.
- 3.3. Unless otherwise stated in writing, a Quote does not include costs of delivery or GST of Goods.
- 3.4. 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 Mt Barker Glass.

4. ORDERS

- 4.1. Every Order by the Customer for the provision of Goods or Services must be submitted in writing (unless otherwise agreed).
- 4.2. Where a Quote has been provided to the Customer, the Customer must reference the Quote number in the Order.

- 4.3. Mt Barker Glass may in its absolute discretion refuse to supply Goods or Services where:
 - 4.3.1. Goods are unavailable for any reason whatsoever;
 - 4.3.2. the Customer's credit limit has been exceeded;
 - 4.3.3. payment for Goods or Services previously provided to the Customer or any associated entity of the Customer (as determined by Mt Barker Glass, acting reasonably), has not been received by Mt Barker Glass.

5. SPECIFICATIONS SUPPLIED BY CUSTOMER

- 5.1. If the Customer requires the Goods to be made to the Specifications, it must provide a copy of the Specifications to Mt Barker Glass in advance of Mt Barker Glass providing the Quote.
- 5.2. In manufacturing the Goods, any deviation from the Specifications do not constitute a basis for any Claim against Mt Barker Glass, provided that such deviations are not material and do not render the Goods unfit for their intended purpose.
- 5.3. After a Quote has been accepted or an Order has been placed by the Customer, Mt Barker Glass will endeavour to comply with any subsequent requests for additions or variations of Specifications, but is under no obligation to do so and may require Additional Charges to be paid by the Customer.
- 5.4. Mt Barker Glass is not responsible for errors in Specifications or proofs which have been finally approved by the Customer.

6. AMENDMENTS & CANCELLATIONS

- 6.1. After the 30 day period referred to in clause 3.2 has expired, Mt Barker Glass reserves the right to amend any Quote to take account of any rise or fall in the cost of completing the proposed Order.
- 6.2. Mt Barker Glass will notify the Customer of such amendment as soon as practicable.
- 6.3. An Order that has been placed by the Customer cannot be cancelled without the prior written consent of Mt Barker Glass. Where an Order is cancelled, the Customer indemnifies the Mt Barker Glass against any Loss incurred by Mt Barker Glass as a result of the cancellation.

7. PROVISION OF GOODS ON CREDIT AND CREDIT APPLICATION

- 7.1. The Customer has no entitlement to credit unless, in Mt Barker Glass's sole discretion, Mt Barker Glass extends credit to the Customer, only up to the Credit Limit approved.
- 7.2. The Customer may apply to Mt Barker Glass in writing to increase or reduce the Credit Limit at any time. Mt Barker Glass may agree or refuse to increase the Credit Limit in its absolute discretion.

- 7.3. The Customer agrees and acknowledges that:
- 7.3.1. the Customer must apply for credit by completing the Credit Application in Schedule 1 of these Sales Terms.
- 7.3.2. Mt Barker Glass may contact the referees listed by the Customer, and discuss the Customer's credit history;
- 7.3.3. Mt Barker Glass may impose conditions on the provision of credit or in the circumstances of increase to the Credit Limit in its absolute discretion, for example including the requirement for a bank guarantee;
- 7.3.4. the Customer is required to ensure at all times that the aggregate amount of all outstanding invoices issued by Mt Barker Glass to the Customer does not exceed the Credit Limit; and
- 7.3.5. the Customer must notify Mt Barker Glass in writing as soon practicable and within 3 days to any changes to information in the Credit Application.
- 7.4. In submitting a Credit Application to Mt Barker Glass, the Customer represents and warrants that:
- 7.4.1. all the information in the Credit Application provided to Mt Barker Glass is accurate, correct and complete; and
- 7.4.2. the Customer is not the subject of an Insolvency Event.
- 7.5. At any time and for any reason in Mt Barker Glass's sole discretion, Mt Barker Glass reserves the right to refuse to supply any Goods or Services to the Customer on credit. Such refusal does not affect the Customer's liability for unpaid Goods and Services.
- 7.6. If the Customer fails to comply with these Sales Terms or fails to pay any amount to Mt Barker Glass when due, or the Customer is subject to an Insolvency Event, the balance of the Customer's account will become due and payable immediately.

8. CUSTOMER-SUPPLIED PRODUCTS

- 8.1. The Customer warrants to Mt Barker Glass that the Customer-Supplied Products are fit for their intended purpose (having regard to the Goods and Services to be performed by Mt Barker Glass), and are free of defects, clean, correct to specification and, if applicable, in ready condition for Mt Barker Glass to perform the Services.
- 8.2. If Mt Barker Glass performs work on Customer-Supplied Products, Mt Barker Glass will be entitled to payment of the Price with respect to that work notwithstanding that the Customer-Supplied Products may not be the goods or chattels described in the Order;
- 8.3. The Customer must undertake its own investigations as to the suitability, reliability and risks of any Customer-Supplied Products in connection with the Goods and Services provided by Mt Barker Glass.
- 8.4. Any comment, suggestion, information, or assistance given by Mt Barker Glass in relation to the Customer-Supplied Products, is given in good faith and is believed to be accurate, appropriate and reliable at the time it is given. Mt Barker Glass does not accept any liability or responsibility for any Loss suffered as a result of the Customer's reliance on such

comment, suggestion, information or assistance.

- 8.5. Mt Barker Glass will take reasonable care when dealing the Customer-Supplied Products.
- 8.6. Notwithstanding clause 8.5, Mt Barker Glass is not responsible for any Loss or spoilage of or damage to Customer-Supplied Products.

9. ADDITIONAL CHARGES

Mt Barker Glass may require the Customer to pay Additional Charges if:

- 9.1. additional work is requested by the Customer which causes Mt Barker Glass to incur costs in excess of the Quote;
- 9.2. inadequate or incorrect information is provided by the Customer to Mt Barker Glass in the course of preparing the Quote or the Order;
- 9.3. information or material is supplied later than required by Mt Barker Glass in these Sales Terms, in order for it to provide the Goods or Services within the specified time frame (if any);
- 9.4. the Customer cancels an Order, resulting in Loss to Mt Barker Glass;
- 9.5. there are material changes in Mt Barker Glass's underlying costs of production, materials, or applicable industrial award rates, in which case 30 days' notice to the Customer will be given in advance of the Additional Charges becoming payable;
- 9.6. Mt Barker Glass is unable to deliver the Goods or Services as contemplated by clause 11.10;
- 9.7. the Customer has not collected Goods inside the Pick-Up Time in accordance with clause 12; or
- 9.8. Mt Barker Glass incurs any third-party expenses for the Customer including courier, packing, delivery, storage and handling charges, government taxes or duties or other imposts, not included in the Quote.

10. RISK AND TRANSPORTATION OF GOODS

- 10.1. Goods supplied by Mt Barker Glass will be either delivered by Mt Barker Glass or collected by the Customer, depending on the terms of the Order.
- 10.2. If Goods will be delivered, the Delivery Point or Work Site will be specified in the Order.
- 10.3. If Goods will be collected, collection will occur from the Pick-Up Point nominated by Mt Barker Glass.
- 10.4. Risk in the Goods immediately passes to the Customer when:
- 10.4.1. the Customer collects the Goods from the Pick-up Point; or
- 10.4.2. the Goods are delivered to the Delivery Point or Work Site, as the case may be.

11. DELIVERY

- 11.1. If the Goods are to be delivered to the Customer but not installed by Mt Barker Glass, then this clause 11 applies.
- 11.2. The Delivery Point will be specified in the Order.
- 11.3. The time of delivery of finished Goods specified in the Quote is an estimate only.
- 11.4. Mt Barker Glass may arrange transport of the finished Goods to the Delivery Point by any means in its absolute discretion.

- 11.5. Unless otherwise agreed, delivery will be made, Monday – Friday between 5.00am-5.00pm.
- 11.6. Mt Barker Glass or its transport contractor will deliver and unload the Goods as close to the Delivery Point as is safe or prudent to do so, as determined by Mt Barker Glass or its transport contractor, acting reasonably.
- 11.7. The Customer must ensure that it has personnel on Work Site at the Delivery Point to accept the delivery of the finished Goods.
- 11.8. The unloading of Goods at the Delivery Point and loading the Customer's vehicle, is the Customer's responsibility at its own cost and risk.
- 11.9. Mt Barker Glass may at its option deliver the Goods to the Customer in any number of instalments unless otherwise agreed.
- 11.10. If Mt Barker Glass is unable to deliver the Goods to the Customer at the Delivery Point, for any reason not attributable to the fault of Mt Barker Glass or its transport contractor:
 - 11.10.1. the Customer indemnifies Mt Barker Glass for all Loss incurred by Mt Barker Glass arising from the non-delivery;
 - 11.10.2. without limiting clause 11.10.1, Additional Charges will apply in respect of extra costs incurred by Mt Barker Glass due to the non-delivery, calculated in accordance with the Customer Price List.

12. COLLECTION

- 12.1. If the Goods are to be collected by the Customer, then this clause 12 applies.
- 12.2. The Customer must pick up the Goods from the Pick-up Point before the expiry of the Pick-up Time.
- 12.3. At the Pick-up Point, Mt Barker Glass may set the Goods down alongside the Customer's vehicle in which case the risk in the Goods immediately passes to the Customer and collection is effected when the Goods are set down alongside the Customer's vehicle.
- 12.4. The unloading of Goods at the Pick-up Point and loading the Customer's vehicle, is the Customer's responsibility at its own cost and risk.
- 12.5. If the Customer does not pick up the Goods before the expiry of the Pick-Up Time:
 - 12.5.1. the Customer indemnifies Mt Barker Glass for all Loss incurred by Mt Barker Glass arising from the Customer not picking up the Goods by the Pick-up Time; and
 - 12.5.2. Mt Barker Glass reserves the right to vary the Quote and/or send a further invoice to include any Additional Charge in respect of any extra costs incurred or additional work carried out due to the not picking up the Goods by the Pick-up Time, in accordance with its then current charge rates.

13. INSTALLATION

- 13.1. This clause 13 applies if the Services include installation of Goods at the Work Site or delivery and installation of the Goods at the Work Site.

- 13.2. The Work Site will be specified in the Order, including the precise location on the Work Site where the Goods will be installed.
- 13.3. The time of installation of finished Goods specified in the Quote is an estimate only.
- 13.4. Mt Barker Glass may arrange transport of the finished Goods to the Work Site by any means in its absolute discretion.
- 13.5. Unless otherwise agreed, delivery will be made, Monday – Friday between 5.00am-5.00pm.
- 13.6. Mt Barker Glass or its transport contractor will deliver and unload the Goods as close to the Work Site as is safe or prudent to do so, as determined by Mt Barker Glass or its transport contractor, acting reasonably.
- 13.7. The Customer must ensure that the Work Site is accessible to Mt Barker Glass to enable the unloading and installation of the finished Goods.
- 13.8. If Mt Barker Glass is unable to unload or install the Goods at the Work Site, for any reason not attributable to the fault of Mt Barker Glass or its transport contractor:
 - 13.8.1. the Customer indemnifies Mt Barker Glass for all Loss incurred by Mt Barker Glass arising from the non-delivery / non-installation;
 - 13.8.2. without limiting clause 13.8.1, Additional Charges will apply in respect of extra costs incurred by Mt Barker Glass due to the non-delivery / non-installation, calculated in accordance with the Customer Price List.

14. ACCEPTANCE OF GOODS & SERVICES

Without prejudice to the Customer's rights under clause 18, if the Customer does not inform Mt Barker Glass in writing of any fault or defect in Goods or Services or other non-compliance with these Sales Terms within forty-eight (48) hours of delivery or collection of Goods, the Customer is deemed to accept the Goods and Services as being in full compliance with these Sales Terms.

15. PRICE AND INVOICING

- 15.1. The Customer must pay the Price specified in the Invoice. Unless otherwise stated on the Invoice, the Price includes GST and associated costs.
- 15.2. The Price will be calculated as:
 - 15.2.1. the amount for the Goods or Services (or both) as set out in:
 - 15.2.1.1. the Quote (if applicable);
 - 15.2.1.2. where no Quote has been provided, Mt Barker Glass's usual prices for the Goods and/or Services as described in the Order, the Customer Price List; and/or
 - 15.2.2. together with any Additional Charges; or as otherwise agreed by Mt Barker Glass and the Customer.
- 15.3. Subject to clause 15.4, the Price is payable upon an Invoice or Invoices being issued by Mt Barker Glass to the Customer. Unless otherwise stated on the face of the Invoice, all Invoices are payable within 7 days (30 days for Customers who have a Credit Limit approved by Mt Barker Glass).

- 15.4. Mt Barker Glass reserves the right to insist on payment of the Price at the same time as delivery of the Goods or performance of the Services.
- 15.5. Mt Barker Glass may, in its absolute discretion, issue Invoices to the Customer:
- 15.5.1. prior to commencing the provision of the Goods or Services; or
 - 15.5.2. before the Order is completed; or
 - 15.5.3. upon completion of the provision of the Goods or Services, or any time after such completion; or
 - 15.5.4. at any of the above times.

16. PAYMENT

- 16.1. Unless otherwise agreed in writing by the parties, the Price, and any other amount payable, must be paid in full by the Customer to Mt Barker Glass by the last day of the calendar month following the month of the Invoice.
- 16.2. Payments to Mt Barker Glass:
- 16.2.1. must be paid in Australian Dollars only; and
 - 16.2.2. may be paid in cash, credit card, or electronic funds transfer.
- 16.3. Payments made by credit card may be subject to a surcharge.
- 16.4. The Customer and Mt Barker Glass agree to comply with their obligations in relation to GST under the GST Law.

17. DEFAULT IN PAYMENT

- 17.1. If the Customer fails to make any payment to Mt Barker Glass when due:
- 17.1.1. Mt Barker Glass may charge interest on all overdue amounts at a rate equivalent to the ANZ Bank overdraft rate on unsecured overdrafts exceeding \$100,000, plus 2%; and
 - 17.1.2. Mt Barker Glass may withhold the provision of any further Goods or Services until overdue amounts are paid in full.
- 17.2. All costs and expenses associated with collecting overdue amounts, including but not limited to legal fees and internal costs and expenses of Mt Barker Glass are, payable by the Customer as a debt due and payable under these Sales Terms.

18. AUSTRALIAN CONSUMER LAW

- 18.1. Mt Barker Glass and the Customer acknowledge that if, and to the extent that, the Australian Consumer Law applies to the supply of Goods or Services by Mt Barker Glass to the Customer, Mt Barker Glass makes the following statement:
- “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 for compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.”
- 18.2. For the purposes of the statement in clause 18.1, “our” means Mt Barker Glass and “you”

means the Customer.

19. WARRANTIES

- 19.1. Without limiting:
- 19.1.1. any Specialist Mt Barker Glass Warranty that may be applicable; or
 - 19.1.2. the Australian Consumer Law or any other statutory obligations relating to the supply of goods and services,
- Mt Barker Glass additionally warrants to the Customer that:
- 19.1.3. Goods are free from defects in workmanship and materials; and
 - 19.1.4. Services are provided with due care and skill,
- for a period of 12 months from the date of purchase by the end user (**warranty period**).
- 19.2. Subject to clause 19.3, if the Goods fail or the installation Services are materially defective for any reason within the warranty period, Mt Barker Glass will:
- 19.2.1. repair or replace the Goods free of charge; and
 - 19.2.2. if applicable, re-perform installation Services free of charge,
- (as the case may be).
- 19.3. The warranty referred to in clause 19.2 is subject to the following conditions and limitations:
- 19.3.1. Failure of the Goods or Services must not be due to any misuse, improper installation or other abuse, damage or misuse by the end-user or the Customer or its agents, employees, suppliers or contractors;
 - 19.3.2. Failure of the Goods or Services must not be due to any environmental factor relating to the storage and use of the Goods, and/or transport of the Goods by the end user, the Customer or its agents, employees, suppliers or contractors. Without limiting the foregoing, the Customer acknowledges that it is a term of this agreement that the Goods must be properly used and maintained in accordance with the directions of Mt Barker Glass from time to time (including any directions as to cleaning the Goods), and any third party-manufacturer’s warranty;
 - 19.3.3. Where Mt Barker Glass supplies Goods on a “Free on Board (FOB)” or “Free Carrier FCA” basis, Mt Barker Glass will not be responsible for damage or Loss caused during freight, shipping and delivery.
- 19.4. To make a warranty claim, the Customer must contact Mt Barker Glass to:
- 19.4.1. report the fault and provide all information that may be reasonably requested by Mt Barker Glass including photographs; and
 - 19.4.2. arrange delivery of the Goods to Mt Barker Glass or an inspection of the Goods on the Work Site by Mt Barker Glass; and
 - 19.4.3. provide proof of purchase from Mt Barker Glass, if reasonably requested by Mt Barker Glass.
- 19.5. Mt Barker Glass will assess the Goods or Services subject of the warranty claim, and in

Mt Barker Glass's sole discretion it is determined:

- 19.5.1. that there is a defect in Goods or Services covered by this warranty, the Customer will not be responsible for costs associated with inspection, labour, parts or delivery costs in repairing or replacing the Goods or re-performing the Services;
 - 19.5.2. if Mt Barker Glass determines that there is not a defect in the Goods or Services which is covered by this warranty, Mt Barker Glass reserves the right to invoice the Customer for any reasonable costs incurred by Mt Barker Glass in relation to the Customer's claim, including attending an inspection, parts, labour and delivery costs.
- 19.6. Apart from:
- 19.6.1. the applicable consumer guarantees under the Australian Consumer Law; and
 - 19.6.2. any Specialist Mt Barker Glass Warranty provided to the Customer,
- all other warranties express or implied and whether arising by virtue of statute or otherwise are excluded.

20. EXCLUSIONS AND LIMITATION OF LIABILITY

- 20.1. The Customer expressly agrees that use of the Goods and Services is at the Customer's risk.
- 20.2. All information and samples provided by Mt Barker Glass in relation to the Goods or Services are approximations only and small variances will not entitle the Customer to reject the Goods or Services or make a Claim in respect of them.
- 20.3. If the Customer does not engage Mt Barker Glass to provide installation Services, then any suggestion given by Mt Barker Glass to the Customer regarding possible third-party installers of Goods is given in good faith and is believed to be appropriate and reasonable at the time it is given. Mt Barker Glass does not accept any liability or responsibility for any Loss suffered as a result of the Customer's reliance on such suggestion. It is a matter for the Customer to select its own third-party installers, as it sees fit.
- 20.4. To the maximum extent allowed by law, Mt Barker Glass's liability for negligence or any breach of this agreement is limited (at Mt Barker Glass's option) to:
 - 20.4.1. Mt Barker Glass re-supplying the Goods or Services in question; or
 - 20.4.2. Mt Barker Glass refunding the Price paid for the Goods or Services in question.

This clause 20 does not exclude or limit the application of any provision of any statute (including the Australian Consumer Law) where to do so would contravene that statute or cause any part of this clause to be void.

21. INDIRECT OR CONSEQUENTIAL LOSS

- 21.1. Neither party is liable to the other party in contract, tort, negligence, breach of statutory duty or otherwise for any loss, damage, costs or expenses of any nature whatsoever incurred or suffered by that other party of an indirect or consequential nature including any

economic loss or other loss of turnover, profits, business or goodwill.

22. GUARANTEES, LIENS, CHARGES

- 22.1. The Customer hereby charges any real or personal property owned now or in the future by the Customer in favour of Mt Barker Glass, in support of the Customer's payment obligations under this agreement, and Mt Barker Glass may register a permissive caveat over any such real property.
- 22.2. Mt Barker Glass may at any time request from the Customer such security or additional security, or third-party guarantees, to better secure the Customer's payment obligations to Mt Barker Glass. If the Customer is a natural person and the Goods are acquired for personal, domestic or household use, Mt Barker Glass is only entitled to reasonable security. The parties agree that there is a rebuttable presumption that any security requested by Mt Barker Glass is reasonable.
- 22.3. Mt Barker Glass' rights under this clause 22 remain in force following termination of this agreement and until all outstanding amounts under these Sales Terms are paid by the Customer.

23. RETENTION OF TITLE

- 23.1. Title in the Goods supplied to the Customer is retained by Mt Barker Glass until all money due and payable by the Customer for those Goods, has been paid.
- 23.2. Prior to title in the Goods passing to the Customer, the Customer:
 - 23.2.1. holds the Goods and any Processed Goods as bailee and fiduciary agent of Mt Barker Glass;
 - 23.2.2. must store the Goods and such part of the Processed Goods separate from its own goods and those of any other third party in such a way as to clearly indicate at all times that the Goods and such part of the Processed Goods are owned by Mt Barker Glass; and
 - 23.2.3. must ensure that, at all times, the Goods and such part of the Processed Goods are properly stored, protected, readily identifiable and insured.
 - 23.2.4. subject to, and in accordance with the PPSA, agrees Mt Barker Glass may keep or resell any of the Goods repossessed.
- 23.3. The Customer must not allow any person to have or acquire any security interest in the Goods.
- 23.4. The Customer may only install or affix the Goods to other goods (so that they become an Accession to those other goods) or use or permit the Goods to be manufactured, processed, assembled, commingled or otherwise dealt with (so that they become Processed Goods) in the ordinary course of the Customer's normal business.
- 23.5. The Customer may sell or deal in the ordinary course of business with the Goods, such part of the Processed Goods or any Accession provided that:
 - 23.5.1. any such sale or dealing is at arms' length and on market terms; and

23.5.2. the Customer holds the proceeds of any sale of or dealing in the Goods on trust for Mt Barker Glass in a separate identifiable account as the beneficial property of Mt Barker Glass and the Customer must pay such amount to Mt Barker Glass on demand.

23.6. The Customer grants an irrevocable licence to Mt Barker Glass and any person authorised by Mt Barker Glass to enter upon any premises where the Goods, Processed Goods or Accessions may be placed or stored to retake possession of the Goods, Processed Goods or Accessions.

24. PPSA

24.1. Expressions defined in the PPSA have the same meaning when used in these Sales Terms.

24.2. These Sales Terms constitute a Security Agreement under the PPSA.

24.3. Where Goods are supplied by Mt Barker Glass to the Customer without payment in full of all moneys payable in respect of the Goods and any Services provided by Mt Barker Glass in respect of those Goods, the Customer acknowledges that Mt Barker Glass has a right to register and perfect a personal property security interest. The Customer consents to Mt Barker Glass registering its security interest on the Personal Property Securities Register and agrees to provide all assistance reasonably required by Mt Barker Glass to facilitate registration or to improve the security position of Mt Barker Glass.

24.4. The Customer must pay Mt Barker Glass all costs and expenses incurred or payable by Mt Barker Glass for registering, maintaining or releasing any security interest in connection with these Sales Terms, or recovery of the Price or any other amounts due or in otherwise enforcing Mt Barker Glass's rights against the Customer, such costs may be invoiced or debited against the Customer's credit account;

24.5. The Customer:

- 24.5.1. waives its right under section 157 of the PPSA to receive a copy of the verification statement verifying registration of a financing statement or a financing change statement relating to a security interest created under these Sales Terms; and
- 24.5.2. contracts out of its rights to receive any other notice or statement under any other provision of the PPSA.

24.6. To the fullest extent permitted by the PPSA, the parties agree to contract out of the following provisions of the PPSA: sections 95, 117, 118, 120, 121(4), 125, the second sentence of section 126(2), sections 129(2), 129(3), 130, 132(3)(d), 132(4), 142 and 143, which sections (or parts of sections) do not apply to these Sales Terms.

25. INTELLECTUAL PROPERTY

25.1. The Customer warrants that any Specifications, Customer-Supplied Goods, materials or instructions given to Mt Barker Glass to provide the Goods or Services do not infringe any Intellectual Property Rights owned by any third party.

25.2. The Customer indemnifies Mt Barker Glass from and against all Claims and Loss arising from a breach of the warranty in clause 25.1.

26. DEFAULT BY CUSTOMER

26.1. Each of the following occurrences constitutes an event of default:

- 26.1.1. the Customer breaches any term of these Sales Terms (including non-payment to Mt Barker Glass when due), and fails to remedy that breach within seven (7) days of being given notice by Mt Barker Glass to do so;
- 26.1.2. the Customer being a natural person, commits an act of bankruptcy within the meaning of Bankruptcy Law;
- 26.1.3. the Customer is insolvent within the meaning of the Corporations Act and/or is subject to a petition, order, or meeting called, for the Customer to be wound up, deregistered or dissolved;
- 26.1.4. a receiver or administrator under Part 5.3A of the Corporations Act is appointed to all or part of the Customer's property;
- 26.1.5. the entering of a scheme of arrangement (other than for restructuring) by the Customer for the benefit of creditors;
- 26.1.6. the Customer ceases or threatens to cease the carrying on its business.

26.2. Where an event of default occurs, Mt Barker Glass may:

- 26.2.1. terminate any or all Orders and credit arrangements (if any) with the Customer;
- 26.2.2. refuse to deliver Goods or provide further Services;
- 26.2.3. retain all money paid by the Customer on account of Goods delivered or Services or otherwise.

26.3. On the occurrence of an event of default by the Customer, the full amount specified in the Invoice, Additional Charges, or any other monies owed, will become immediately due and payable to Mt Barker Glass.

27. TERMINATION

In addition to Mt Barker Glass' rights under clause 26.2.1, termination may occur as follows:

- 27.1. by Mt Barker Glass, upon 7 days' written notice to the Customer;
- 27.2. by the Customer, if Mt Barker Glass breaches any of these Sales Terms and fails to remedy such breach within 21 days of being given written notice by the Customer to do so; or
- 27.3. by mutual agreement by Mt Barker Glass and the Customer.

28. INDEMNITY AND RELEASE

28.1. The Customer releases and indemnifies, and keeps indemnified Mt Barker Glass, its officers, employees, contractors and agents in respect of any Claims against Mt Barker Glass or, for which Mt Barker Glass is liable, in connection with:

- 28.1.1. the Customer's breach of these Sales Terms;
- 28.1.2. use of the Goods by Mt Barker Glass's workers, agents and

contractors on any premises or Work Site which is owned or controlled by the Customer.

- 28.2. This provision remains in force after the termination of this agreement.

29. FORCE MAJEURE

- 29.1. If circumstances beyond Mt Barker Glass's control prevent or delay its provision of the Goods or Services, Mt Barker Glass is relieved of any obligation to provide the Goods or Services while those circumstances continue. Mt Barker Glass may elect to terminate this agreement or keep the agreement on foot until such circumstances have ceased.
- 29.2. Circumstances beyond Mt Barker Glass's control include, but are not limited to, unavailability of materials or components, fire, flood, storm or other severe weather condition, pandemic including the Covid-19 pandemic declared by the World Health Organisation in March 2020, lockdown or quarantine ordered by a government agency, transport difficulties and failures or malfunctions of computers or other information technology systems.

30. GENERAL

- 30.1. Any notice given under these Sales Terms must be in writing and be hand delivered, sent by prepaid post, or email to the address, shown at the commencement of this agreement (or otherwise notified) and will be deemed given:
- 30.1.1. in case of hand delivery, on the date of delivery; or
- 30.1.2. in the case of prepaid post, two (2) business days after being sent by prepaid post and deemed to be served on the second business day following the day on which it was posted; or
- 30.1.3. in case of email, evidence that the email has been successfully sent will be prima facie evidence of the addressed recipient's receipt of that email at the time of dispatch.
- 30.2. This agreement is subject to the laws of South Australia and the parties submit themselves to the jurisdiction of the Courts of South Australia and any competent appellate courts.
- 30.3. No rule of construction or interpretation will be construed to disadvantage any party because that party was responsible for its preparation or drafting.
- 30.4. The failure of a party to insist on any one or more instances upon the performance of any provisions of these Sales Terms will not be construed as a waiver or relinquishment of that party's rights to future performance of such provision.
- 30.5. Any provisions in these Sales Terms which are unenforceable, illegal or otherwise invalid, will be read down to the minimum extent necessary to achieve validity, if applicable, or if not applicable be severed, and without affecting the remaining provisions of these Sales Terms.
- 30.6. This agreement and any written variations agreed in writing by Mt Barker Glass represent the whole of the agreement between the parties.

- 30.7. These Sales Terms supersede all oral and written negotiations and communications on and on behalf of the parties.
- 30.8. In entering into these Sales Terms, the Customer has not relied on any warranty representation or statement, whether written or oral, made by Mt Barker Glass or any of its employees or agent relating to or in connection with the subject matter of these Sales Terms.
- 30.9. These Sales Terms must not be amended or varied unless it is in writing and executed by both parties.

31. DEFINITIONS

In these Sales Terms:

- 31.1. **Accession** means any Goods which are installed in or affixed to other goods;
- 31.2. **Additional Charges** means fees or charges for additional work performed or expenses incurred at the Customer's request or as reasonably required as a result of the Customer's conduct, calculated in accordance with the Mt Barker Glass's then current prices;
- 31.3. **Bankruptcy Act** means the *Bankruptcy Act 1966* (Cth).
- 31.4. **Claims** means and includes any claim, notice, demand, action, inaction, proceeding, litigation, prosecution, arbitration, investigation, judgment, award, damage, loss, cost, expense or liability however arising, whether present, unascertained, immediate, future or contingent, whether based in contract, tort or statute, and whether involving a third party or a party to this agreement or otherwise;
- 31.5. **Mt Barker Glass** means Mt Barker Glass Pty Ltd ABN 73 673 874 156 and any related body corporate (within the meaning of s 50 of the Corporations Act);
- 31.6. **Corporations Act** means the *Corporations Act 2001* (Cth);
- 31.7. **Credit Application** means the document titled "Application for Credit" executed by the Customer;
- 31.8. **Credit Limit** means the maximum amount of credit which Mt Barker Glass agrees to grant to the Customer, as determined by the Mt Barker Glass in its sole and unfettered discretion.
- 31.9. **Customer** means a person named as the Customer in the Quote;
- 31.10. **Customer Price List** means any document titled "Price List" or similar which is provided by Mt Barker Glass to the Customer from time to time.
- 31.11. **Customer-Supplied Products** means all goods, materials and substrates which are provided to Mt Barker Glass by or on behalf of the Customer and on which, or using which, Mt Barker Glass is to perform a Service. By way of example only, sheets of glass;
- 31.12. **Delivery Point** means the location of the Customer's premises where Goods will be delivered, as contemplated in clause 11.2;
- 31.13. **Goods** means all goods and chattels described in the Quote and, where the context allows, includes Supplied Goods;
- 31.14. **GST** means goods and services tax under the GST Law;
- 31.15. **GST Law** means the *A New Tax System (Goods & Services Tax) Act 1999* (Cth);
- 31.16. **Guarantee and Indemnity** means the guarantee and indemnity given by the Guarantor to Mt Barker Glass in the document

- titled 'Guarantee and Indemnity and annexed hereto;
- 31.17. **Guarantor** means any of the following as applicable to the Customer:
- 31.17.1. any and all directors of the Customer;
 - 31.17.2. the person who is the sole trader, if the Customer is a sole trader;
 - 31.17.3. any and all partners if the Customer is a partnership; or
 - 31.17.4. any other related party of the Customer required by Mt Barker Glass to execute the Guarantee and Indemnity;
- 31.18. **Intellectual Property Rights** means intellectual property rights at any time protected by statute or common law, including copyright, trade marks, patents and registered designs.
- 31.19. **Insolvency Event** means any of the following events concerning a person (including a body corporate):
- 31.19.1. if an administrator, liquidator, receiver, receiver and manager, or other controller (as defined in the Corporations Act) is appointed to, or over, any of the property or undertaking of the person;
 - 31.19.2. if the person becomes bankrupt;
 - 31.19.3. if a controlling trustee is appointed to, or over, any of the property or undertaking of the person;
 - 31.19.4. if the person or the person's property becomes subject to a personal insolvency arrangement under Part X of the Bankruptcy Act or a debt agreement under Part IX of the Bankruptcy Act;
 - 31.19.5. if the person is unable to pay its debts as and when they fall become due and payable;
 - 31.19.6. if the person ceases to carry on a business;
- 31.20. **Invoice** means a GST-Law compliant tax invoice issued by Mt Barker Glass to the Customer.
- 31.21. **Loss** includes, but is not limited to, costs (including party to party legal costs and Mt Barker Glass' legal costs), expenses, lost profits, award of damages, personal injury and property damage.
- 31.22. **Order** means the written notification of the Customer to Mt Barker Glass that the Quote has been accepted;
- 31.23. **Pick-up Point** means Mt Barker Glass's premises at Royal Park or Melrose Park, as contemplated in clause 10.3;
- 31.24. **Pick-up Time** means, unless otherwise agreed, within 7 days of notice from Mt Barker Glass that the Goods are ready for collection, as contemplated in clause 12.2;
- 31.25. **PPSA** means Personal Properties Securities Act 2001 (Cth);
- 31.26. **Price** means the price referred to in clause 15;
- 31.27. **Processed Goods** means Goods which, after delivery to the Customer, become part of a product or mass by being manufactured, processed, assembled, commingled or otherwise dealt with so that their identity is lost in the product mass;
- 31.28. **Quote** means all the quotes provided by Mt Barker Glass to the Customer in which the Customer is named, the Quote number is enumerated, the details, pricing and timing of the Goods and/or Services are provided, and

in which some or all the Specifications are accepted;

- 31.29. **Sales Terms** means these terms and conditions comprising Clauses 1 – 32 inclusive, as may be varied by time to time and provided to the Customer;
- 31.30. **Services** means any service which may be provided to the Customer by Mt Barker Glass under this agreement including, designing, manufacturing, repairing, or treating the Goods, and installation of the Goods under clause 13;
- 31.31. **Specifications** means any design, schematic, drawing, particulars of weights or dimensions or constituent products for Goods or relating to the Goods or Services referred to in the Quote which have been supplied by the Customer to be used by Mt Barker Glass in the course of providing the Services as well as full particulars of any Supplied Goods;
- 31.32. **Specialist Mt Barker Glass Warranty** means any additional written warranty provided by Mt Barker Glass to the Customer in relation to the Goods;
- 31.33. **Work Site** means the location where Goods are installed by Mt Barker Glass pursuant to clause 13.

32. INTERPRETATION

In these Sales Terms:

- 32.1. reference to a person includes that individual, their heirs, executors, administrators, successors and assigns of that person, corporations and associations;
- 32.2. a reference to writing includes email and other communication established through the Mt Barker Glass's website (if any);
- 32.3. words importing the singular number include the plural and vice versa;
- 32.4. where a word or phrase is defined, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- 32.5. headings are for convenience only and do not affect interpretation;
- 32.6. references to any legislation or to any provision of any legislation include any modification or re-enactment or any legislation or legislative provision substituted for, and all regulations and instruments issued under, such legislation or provision.