

Airlie Glass and Aluminium - Terms and Conditions of Trade

1. **Definitions**
 - 1.1 "AGA" means "Airlie Glass and Aluminium" (AGA) (ABN: 61 602 978 231), by its successors assigns or any person acting on behalf of "Airlie Glass and Aluminium", and with the authority.
 - 1.2 "Customer" means the persons buying the "Goods or Services" as specified in any invoice, document or order, and if there is more than one Customer is a reference to each Customer jointly and severally.
 - 1.3 "Goods" means all "Goods" or "Services" supplied by AGA to the Customer at the Customer's request from time to time (where the context so permits the terms "Goods", "Services", and or shall be interchangeable for each other).
 - 1.4 "Price" means the Price payable for the Goods as agreed between AGA and the Customer in accordance with clause 4.
 2. **Acceptance**
 - 2.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions when the Customer places an order for or accepts delivery of the Goods.
 - 2.2 These terms and conditions of trade may only be amended with AGA consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Customer and AGA.
 3. **Change in Control**
 - 3.1 The Customer shall give AGA not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer's details (including but not limited to, changes in the Customer's name, address, contact phone or fax number(s), or business practice). The Customer shall be liable for any loss incurred by AGA as a result of the Customer's failure to comply with this clause.
 4. **Price and Payment**
 - 4.1 At AGA sole discretion the Price shall be either:
 - a) as indicated on any invoice provided by AGA to the Customer or the Price as at the date of delivery of the Goods according to AGA current price list; or
 - b) AGA quoted price (subject to clause 5.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days;
 - 4.2 AGA reserves the right to change the Price if a variation to AGA's quotation is requested. Payment for all variations must be made in full at their time of completion.
 - 4.3 At AGA's sole discretion a non-refundable deposit may be required.
 - 4.4 Time for payment for the Goods being of the essence, the Price will be payable by the Customer on the date(s) determined by AGA, which may be:
 - a) on delivery of the Goods;
 - b) before delivery of the Goods;
 - c) the date specified on any invoice or other form as being the date for payment; or
 - d) failing any notice to the contrary, the date which is fourteen (14) days following the date of any invoice given to the Customer by AGA.
 - 4.5 Payment may be made by cash, cheque, bank cheque, electronic/online banking, or by any other method as agreed to between the Customer and AGA.
 - 4.6 Unless otherwise stated the Price does not include GST. In addition to the Price the Customer must pay to AGA an amount equal to any GST AGA must pay for any supply by AGA under this or any other agreement for the sale of the Goods. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition the Customer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.
 5. **Delivery of Goods**
 - 5.1 Delivery ("Delivery") of the Goods is taken to occur at the time that:
 - a) the Customer or the Customer's nominated carrier takes possession of the Goods at AGA's address; or
 - b) AGA (or AGA's nominated carrier) delivers the Goods to the Customer's nominated address even if the Customer is not present at the address.
 - 5.2 At AGA's sole discretion the cost of delivery is either included in the Price or is in addition to the Price.
 - 5.3 Delivery of the Goods to a third party nominated by the Customer is deemed to be delivery to the Customer for the purposes of this agreement.
 - 5.4 The Customer must take delivery by receipt or collection of the Goods whenever either is tendered for delivery. In the event that the Customer is unable to take delivery of the Goods as arranged then AGA shall be entitled to charge a reasonable fee for redelivery of the Goods and/or the storage of the Goods.
 - 5.5 The Customer shall take delivery of the Goods tendered notwithstanding that the quantity so delivered shall be either greater or lesser than the quantity purchased provided that:
 - a) such discrepancy in quantity shall not exceed five percent (5%); and
 - b) the Price shall be adjusted pro rata to the discrepancy.
 - 5.6 AGA may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with these terms and conditions.
 - 5.7 Any time or date given by AGA to the Customer is an estimate only. The Customer must still accept delivery of the Goods even if late and AGA will not be liable for any loss or damage incurred by the Customer as a result of the delivery being late.
 6. **Risk**
 - 6.1 Risk of damage to or loss of the Goods passes to the Customer on Delivery and the Customer must insure the Goods on or before Delivery.
 - 6.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, AGA is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by AGA is sufficient evidence of AGA's rights to receive the insurance proceeds without the need for any person dealing with AGA to make further enquiries.
 7. **Access**
 - 7.1 The Customer shall ensure that AGA has clear and free access to the work site at all times to enable them to undertake the works. AGA shall not be liable for any loss or damage to the site including without limitation, damage to pathways, driveways and concrete or paved or grassed areas.
 8. **Dimensions, Plans and Specifications**
 - 8.1 All customary industry tolerances shall apply to the dimensions and measurements of the Goods unless AGA and the Customer agree otherwise in writing. AGA shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Customer.
 - 8.2 If the giving of an estimate or quotation for the supply of Goods involves AGA estimating measurements and quantities, it shall be the responsibility of the Customer to verify the accuracy of AGA's estimated measurements and quantities, before the Customer places an order based on such estimate or accepts such quotation.
 - 8.3 Should the Customer require any changes to AGA's estimated measurements and quantities, the Customer shall request such changes in writing.
 9. **Customer's Disclaimer**
 - 9.1 The Customer hereby disclaims any right to rescind, or cancel the contract or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Customer by AGA and the Customer acknowledges that the Goods are bought relying solely upon the Customer's skill and judgment. Where AGA provides advice to the Customer, such advice is given in good faith only. The Customer acknowledges that AGA shall not be liable for any claims howsoever arising out of any advice given.
 10. **Insurance**
 - 10.1 AGA shall have public liability insurance of at least \$5m. It is the Customer's responsibility to ensure they are similarly insured.
 11. **Retention of Title to Goods**
 - 11.1 AGA and the Customer agree that ownership of the Goods shall not pass until:
 - (a) the Customer has paid AGA all amounts owing to AGA; and
 - (b) the Customer has met all of its other obligations to AGA.
 - 11.2 Receipt by AGA of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.
 - 11.3 It is further agreed that:
 - (a) until ownership of the Goods passes to the Customer in accordance with clause 11.1 that the Customer is only a bailee of the Goods and must return the Goods to AGA on request;
 - (b) the Customer holds the benefit of the Customer's insurance of the Goods on trust for AGA and must pay to AGA the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;
 - (c) the Customer must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Customer sells, disposes or part with possession of the Goods then the Customer must hold the proceeds of any such act on trust for AGA and must pay or deliver the proceeds to AGA on demand;
 - (d) the Customer shall not convert or process the Goods or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of AGA and must sell, dispose of or return the resulting product to AGA as it so directs;
 - (e) the Customer irrevocably authorises AGA to enter any premises where AGA believes the Goods are kept and recover possession of the goods;
 - (f) AGA may recover possession of any Goods in transit whether or not delivery has occurred; and
 - (g) the Customer shall not convert or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of AGA;
 - (h) AGA may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.
 12. **Personal Property Securities Act 2009 ("PPSA")**
 - 12.1 In this clause financing statement, financing charge statement, security agreement, and security interest has the meaning given to it by the PPSA.
 - 12.2 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods/Equipment that has previously been supplied and that will be supplied in the future by AGA to the Customer.
 - 12.3 The Customer undertakes to:
 - (a) register a financing statement and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which AGA may reasonably require to:
 - (i) register a financing statement or financing charge statement in relation to a security interest on the Personal Property Security Register;
 - (ii) register any other document required to be registered by the PPSA; or
 - (iii) correct a defect in a statement referred to in clause 12.3(a)(i) or 12.3(a)(ii);
 - (b) indemnify and upon demand reimburse AGA for all expenses incurred in registering a financing statement or financing charge statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby;
 - (c) not register a financing charge statement in respect of a security interest without the prior written consent of AGA;
 - (d) not register, or permit to be registered, a financing statement or a financing charge statement in relation to the Goods in favour of a third party without the prior written consent of AGA;
 - (e) immediately advise AGA of any material change in its business practices of selling Goods which would result in a change in the nature of proceeds derived from such sales.
 - 12.4 AGA and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
 - 12.5 The Customer waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
 - 12.6 The Customer waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
 - 12.7 Unless otherwise agreed to in writing by AGA, the Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.
 - 12.8 The Customer must unconditionally ratify any actions taken by the AGA under clauses 12.3 to 12.5.
 - 12.9 Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
 13. **Security and Charge**
 - 13.1 In consideration of AGA agreeing to supply the Goods, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
 - 13.2 The Customer indemnifies AGA from and against all AGA's costs and disbursements including legal costs on a solicitor and own Customer basis incurred in exercising AGA rights under this clause.
 - 13.3 The Customer irrevocably appoints AGA and each director of AGA as the Customer's true and lawful attorneys to perform all necessary acts to give effect to the provisions of this clause 14 including, but not limited to, signing any document on the Customer's behalf.
 14. **Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)**
 - 14.1 The Customer must inspect the Goods on delivery and must within thirty (30) days of delivery notify AGA in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quality.
 - 14.2 The Customer must notify any other alleged defect in the Goods as soon as it is reasonably possible after any such defect becomes evident. Upon such notification the Customer must allow AGA to inspect the Goods. Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (Non-Excluded Guarantees).
 - 14.3 AGA acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
 - 14.4 Except as expressly set out in these terms and conditions in respect of the Non-Excluded Guarantees, AGA makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. AGA's liability in respect of these warranties is limited to the fullest extent permitted by law.
 - 14.5 If the Customer is a consumer within the meaning of the CCA, AGA liability is limited to the extent permitted by section 64A of Schedule 2.
 - 14.6 If AGA is required to replace the Goods under this clause or the CCA, but is unable to do so, AGA may refund any money the Customer has paid for the Goods.
 - 14.7 If the Customer is not a consumer within the meaning of the CCA, AGA's liability for any defect or damage in the Goods is:
 - (a) limited to the value of any express warranty or warranty card provided to the Customer by AGA at the AGA's sole discretion;
 - (b) limited to any warranty to which AGA is entitled, if AGA did not manufacture the Goods;
 - (c) otherwise negated absolutely.
 - 14.8 Subject to this clause 14, returns will only be accepted provided that:
 - (a) The Customer has complied with the provisions of clause 14.1; and
 - (b) the Goods are returned within a reasonable time at the Customer's cost (if that cost is not significant); and
 - (c) the Goods are returned in as close a condition to that in which they were delivered as is possible.
 - 14.9 AGA shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
 - (a) the Customer failing to properly maintain or store any Goods;
 - (b) the Customer using the Goods for any purpose other than that for which they were designed;
 - (c) the Customer continuing the use of the Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
 - (d) the Customer failing to follow any instructions or guidelines provided by the Goods;
 - (e) fire or water, or any accident, or act of God.
 - 14.10 AGA may in its absolute discretion accept non-defective Goods for return in which case AGA may require the Customer to pay handling fees of up to fifteen percent (15%) of the value of the returned Goods plus any freight costs.
 15. **Intellectual Property**
 - 15.1 Where AGA has designed, drawn or developed Goods for the Customer, then the copyright in any designs and drawings and documents shall remain the property of AGA.
 - 15.2 The Customer warrants that all designs, specifications or instructions given to AGA will not cause AGA to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify AGA against any action taken by a third party against AGA in respect of any such infringement.
 16. **Consequences of Default**
 - 16.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of five percent (5%) per annum (and at AGA's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
 - 16.2 If the Customer owes AGA any money the Customer shall indemnify AGA from and against all costs and disbursements incurred by AGA in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own Customer basis, AGA's contract default fee, and bank dishonour fees).
 - 16.3 If any account remains overdue after thirty (30) days then an amount of the greater of twenty dollars (\$20.00) or ten percent (10%) of the amount overdue (up to a maximum of two hundred dollars (\$200.00)) shall be levied for administration fees which sum shall become immediately due and payable.
 - 16.4 Without prejudice to any other remedies AGA may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions, AGA may suspend or terminate the supply of Goods to the Customer. AGA will not be liable to the Customer for any loss or damage the Customer suffers because AGA has exercised its rights under this clause.
 - 16.5 Without prejudice to AGA other remedies at law AGA shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to AGA shall, whether or not due for payment, become immediately payable if:
 - (a) any money payable to AGA becomes overdue, or in AGA's opinion the Customer will be unable to make a payment when it falls due;
 - (b) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (c) a receiver, manager, liquidator (provisional liquidator) or similar person is appointed in respect of the Customer or any asset of the Customer.
 17. **Cancellation**
 - 17.1 AGA may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are due to be delivered by giving written notice to the Customer. On giving such notice AGA shall repay to the Customer any money paid by the Customer for the Goods. AGA shall not be liable for any loss or damage whatsoever arising from such cancellation.
 - 17.2 In the event that the Customer cancels delivery of the Goods the Customer shall be liable for any and all loss incurred (whether direct or indirect) by AGA as a direct result of the cancellation (including, but not limited to, any loss of profits).
 18. **Privacy Act 1988 - Australian Privacy Principles (APPs) 2014**
 - 18.1 The Customer agrees for AGA to obtain from a credit reporting agency a credit report containing personal credit information about the Customer in relation to credit provided by AGA.
 - 18.2 The Customer agrees that AGA may exchange information about the Customer with those credit providers either named as trade referees by the Customer or named in a consumer credit report issued by a credit reporting agency for the following purposes:
 - (a) to assess an application by the Customer; and/or
 - (b) to notify other credit providers of a default by the Customer; and/or
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or
 - (d) to assess the creditworthiness of the Customer. The Customer understands that the information exchanged can include anything about the Customer's creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act 1988.
 - 18.3 The Customer consents to AGA being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(b) Privacy Act 1988).
 - 18.4 The Customer agrees that personal credit information provided may be used and related by AGA for the following purposes (and for other purposes as shall be agreed between the Customer and AGA or required by law from time to time):
 - (a) the provision of Goods; and/or
 - (b) the marketing of Goods by AGA, its agents or distributors; and/or
 - (c) analysing, verifying and/or checking the Customer's credit; and/or
 - (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or
 - (e) enabling the daily operation of the Customer's account and/or the collection of amounts outstanding in the Customer's account in relation to the Goods.
 - 18.5 AGA may give information about the Customer to a credit reporting agency for the following purposes:
 - (a) to obtain a consumer credit report about the Customer;
 - (b) allow the credit reporting agency to create or maintain credit or maintain credit information file containing information about the Customer.
 - 18.6 If information given to the credit reporting agency may include:
 - (a) personal particulars (the Customer's name, sex, address, previous addresses, date of birth, name of employer and driver's licence number);
 - (b) details concerning the Customer's application for credit or commercial credit and the amount requested;
 - (c) advice that AGA is a current credit provider to the Customer;
 - (d) notice of any overdue accounts, loan repayments, and/or any outstanding monies owing which are overdue by more than sixty (60) days, and for which debt collection action has been started;
 - (e) the Customer's overdue accounts, loan repayments and/or any default that has been listed;
 - (f) information that in the opinion of AGA, the Customer has committed a serious credit infringement (that is, fraudulently shown an intention not to comply with the Customer's credit obligations);
 - (g) information that cheques drawn on the Customer for one hundred dollars (\$100) or more, have been dishonoured more than once;
 - (h) that credit provided to the Customer by AGA has been paid or otherwise discharged.
19. **Credit Reporting Policy**
 - 19.1 AGA Credit Reporting Policy applies specifically to credit related personal and business information which is credit information, credit eligibility information or credit reporting body derived information about an individual or business ("Credit Related Information") and sets out how AGA and its related Australian entities, manages that information. AGA is bound by the Privacy Act 1988 (Ch) (Act) and the Credit Reporting Privacy Code ("Code") to the extent applicable in relation to that Credit Related Information. This AGA Credit Reporting Policy applies in addition to our Privacy Policy which applies to other personal information. A copy of AGA Credit Reporting Policy and AGA Privacy Policy can be obtained from AGA.
 - 19.2 By completing the AGA Credit Application or entering into contracts with AGA or otherwise providing AGA with your Credit Related Information, you agree to the terms of this AGA Credit Reporting Policy. Depending on the matter in which you communicate with AGA, further privacy information may apply in addition to the matters discussed in this AGA Credit Reporting Policy.
 - 19.3 From time to time AGA may update this AGA Credit Reporting Policy. When changes are made we will revise the date of the last update listed at the end of this Policy. We encourage you to check our website regularly for any updates to our AGA Credit Reporting Policy and the AGA Privacy Policy.
20. **Dispute Resolution**
 - 20.1 If a dispute arises between the parties to this contract then either party shall send to the other party a notice of dispute in writing adequately identifying and providing details of the dispute. Within fourteen (14) days after service of a notice of dispute, the parties shall confer at least once, and attempt to resolve the dispute. At any such conference each party shall be represented by a person having authority to agree to a resolution of the dispute. In the event that the dispute cannot be so resolved either party may by further notice in writing delivered by hand or sent by certified mail to the other party refer such dispute to arbitration. Any arbitration shall be referred to a single arbitrator to be nominated by the President of the Institute of Arbitrators Australia; and conducted in accordance with the Institute of Arbitrators Australia Rules for the Conduct of Commercial Arbitration.
21. **Compliance with Laws**
 - 21.1 The Customer and AGA shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the works.
 - 21.2 The Customer shall obtain (at the expense of the Customer) all licenses and approvals that may be required for the works.
 - 21.3 The Customer agrees that the site will comply with any occupational health and safety laws relating to building/construction sites and any other relevant safety standards or legislation.
22. **Building & Construction Industry Security of Payment Act**
 - 22.1 At AGA sole discretion, if there are any disputes or claims for unpaid Goods then the provisions of the Building and Construction Industry Security of Payment Act may apply.
 - 22.2 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Building and Construction Industry Security of Payment Act, except to the extent permitted by the Act where applicable.
23. **General**
 - 23.1 The failure by AGA to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect AGA's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
 - 23.2 These terms and conditions and any contract to which they apply shall be governed by the laws in which AGA has its principal place of business, and are subject to the jurisdiction of the courts in that state.
 - 23.3 Subject to clause 14, AGA shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by AGA of these terms and conditions (alternatively AGA's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
 - 23.4 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by AGA nor to withhold payment of any invoice because part of that invoice is in dispute.
 - 23.5 AGA may license or sub-contract all or any part of its rights and obligations under the Customer's consent.
 - 23.6 The Customer agrees that AGA may amend these terms and conditions at any time. If AGA makes a change to these terms and conditions, then that change will take effect from the date on which AGA notifies the Customer of such change. The Customer will be taken to have accepted such changes if the Customer makes a further request for AGA to provide Goods to the Customer.
 - 23.7 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
 - 23.8 The Customer warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.