

# EXPRESS GLASS 24 HOUR SERVICE PTY LTD

(ABN: 13 074 588 328)

("Express Glass")

## TERMS OF SUPPLY

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### 1 Definitions

In these Terms of Supply, unless the contrary intention appears:

**Customer** means the person identified as the customer in the Quotation.

**Goods** means any goods supplied by Express Glass to the Customer.

**GST** has the meaning as it appears in the Goods and Services Tax Act 1999 (Cth).

**Installation Address** means the address specified for installation specified in the Quotation.

**Quotation** means the document issued by Express Glass to the Customer which contains details of: (i) the Goods and Services to be supplied by Express Glass, (ii) the price payable for those Goods and Services and (iii) the expected date on which the Goods and Services will be supplied.

**Services** means any services supplied by Express Glass to the Customer.

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### 2 Formation of Contract

2.1 These Terms of Supply apply to the supply of all Goods and Services by Express Glass to the Customer and to the exclusion of all other Terms of Supply.

2.2 Express Glass may, but is not obliged to, supply Goods and/or Services to the Customer until the Quotation is accepted by the Customer. The Customer may accept the Quotation by (i) written purchase order, (ii) written acceptance, (iii) email, (iv) verbally or (v) permitting delivery/installation by Express Glass.

2.3 All specifications, illustrations, drawings, data, dimensions and weights howsoever provided or made available by Express Glass are intended to be by way of a general description and do not form part of these Terms of Supply.

2.4 Subject to the guarantees implied by the Australian Consumer Law and any warranties or conditions expressly stated in these Terms of Supply, Express Glass excludes all implied guarantees warranties and conditions.

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### 3 Price

3.1 The price payable by the Customer to Express Glass for the Goods and Services is, subject to clause 3.2, the price stated in the Quotation relating to those Goods and Services.

3.2 The price stated in the Quotation may change without notice depending on materials and time taken to complete the work specified in the Quotation.

3.3 Where Goods and Services are required in addition to those specified in the Quotation, the Customer must pay for the cost for the additional Goods and Services which will be calculated by reference to Express Glass' standard charges for those Goods and Services.

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### 4 Invoice and Payment

4.1 Express Glass will issue a GST invoice to the Customer in accordance with clause 3 after the Goods and Services have been supplied to the Customer.

4.2 The Customer must pay the invoice issued by Express Glass by EFT in full within 30 days of the issue of the invoice.

- 4.3 Express Glass may charge interest on any amount owed to it by the Customer under an unpaid invoice at the rate of 12% per annum.
- 4.4 Express Glass may in its discretion allocate any payment received from the Customer towards any invoice that Express Glass determines.
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## **5 Supply**

- 5.1 The Goods and Services will be supplied at the address notified to the Customer to Express Glass in the Quotation.
- 5.2 The risk of loss or damage to the Goods passes to the Customer on installation.
- 5.3 Any date specified in a Quotation, as the date by which Goods and Services will be supplied, is not an essential term of these Terms of Supply. Express Glass will not be liable for any loss or damage suffered by the Customer as a result of Goods and Services not being supplied by the date specified.
- 5.4 The Customer must notify Express Glass in writing of any claim relating to the Goods and Services within seven days of supply.
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## **6 Liability Limitation**

- 6.1 Express Glass is not liable for:
- (a) any defects or damage caused in whole or in part, by misuse, abuse, neglect, improper application, repair or alteration (other than by Express Glass) or accident;
  - (b) technical advice or assistance given by Express Glass which is not connected with the supply of the Goods and Services; or
  - (c) any damage or deficiency, loss of profits, loss of revenue, loss of business opportunity, loss of reputation or any other head of damage commonly called 'indirect' or 'consequential' arising from the supply of the Goods and Services.
- 6.2 Express Glass's liability to the Customer in respect of claims made by the Customer are limited as follows:
- (a) in the case of goods:
    - (i) replacing the goods; or
    - (ii) supplying equivalent goods; or
    - (iii) payment of the cost of replacing the goods or acquiring equivalent goods.
  - (b) in the case of services:
    - (i) supplying the services again; or
    - (ii) payment of the cost of having the services supplied again.
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## **7 Intellectual Property**

- 7.1 The intellectual property rights in any specification and/or design (including sketches, diagrams, plans and CAD renderings) provided by Express Glass remains the property of Express Glass.
- 7.2 The Customer warrants to Express Glass that its use of any specification and/or design (including sketches, diagrams, plans and CAD renderings) provided by the Customer to Express Glass do not infringe the intellectual property rights of any third party.
- 7.3 The Customer agrees to indemnify Express Glass against all actions, demands, costs and losses however arising from the use of intellectual property furnished or given by the Customer which infringe any third party rights in intellectual property.

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## **8 Force Majeure**

- 8.1 If Express Glass is unable to perform in whole or in part any obligation under these Terms of Supply due to an event beyond its control, Express Glass will be relieved of that obligation under these Terms of Supply to the extent and for the period that it is unable to perform.

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## **9 Termination**

- 9.1 Express Glass may suspend supply of the Goods and/or Services and may terminate the supply of the Goods and/or Services if (i) the Customer is in breach of these Terms of Supply or (ii) the Customer enters administration or has a receiver or receiver and manager or liquidator appointed to it or is otherwise deemed to be insolvent.

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## **10 General**

- 10.1 Failure by Express Glass to enforce any of the provisions contained in these Terms of Supply is not a waiver of any of the rights of Express Glass has.
- 10.2 Part or all of any provision of these Terms of Supply that is illegal or unenforceable may be severed from these Terms of Supply and the remaining provisions of these Terms of Supply will continue in force.
- 10.3 The rights powers and remedies under these Terms of Supply are in addition to, and do not limit or exclude any right, power or remedy available to Express Glass by law.
- 10.4 The Customer indemnifies and will keep indemnified Express Glass, its employees, contractors and agents in respect of (i) any claim demand or action made or asserted against any one or more of them or (ii) any loss sustained by Express Glass arising out of any negligent or wilful act or omission on the part of the Customer, its employers, contractors and agents.
- 10.5 These Terms of Supply are not to be construed to the disadvantage of Express Glass on the basis that Express Glass prepared these Terms of Supply or seeks to rely on these Terms of Supply.
- 10.6 The Customer must reimburse Express Glass for any costs it incurs in exercising any of its rights under these Terms of Supply including any reasonable legal fees or debt collection agency fees.
- 10.7 The Customer may not assign any of its rights under these Terms of Supply without the written consent of Express Glass.
- 10.8 These Terms of Supply, each Quotation and all related information and documents are confidential and must not be disclosed by the Customer to any third parties, except to the extent required by law or to its professional advisors.
- 10.9 These Terms of Supply are governed by the laws of New South Wales and each party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of New South Wales.