
Asling Street Glass Pty Ltd T/A Monash Glass – Terms & Conditions of Trade

1. Definitions

- 1.1 “Contract” means the terms and conditions contained herein, together with any quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.
- 1.2 “Monash Glass” means Asling Street Glass Pty Ltd T/A Monash Glass, its successors and assigns or any person acting on behalf of and with the authority of Asling Street Glass Pty Ltd T/A Monash Glass.
- 1.3 “Client” means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting Monash Glass to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
- (a) if there is more than one Client, is a reference to each Client jointly and severally; and
 - (b) if the Client is a partnership, it shall bind each partner jointly and severally; and
 - (c) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and
 - (d) includes the Client’s executors, administrators, successors and permitted assigns.
- 1.4 “Goods” means all Goods or Services supplied by Monash Glass to the Client at the Client’s request from time to time (where the context so permits the terms ‘Goods’ or ‘Services’ shall be interchangeable for the other).
- 1.5 “Confidential Information” means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Contract, either party’s intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, client information (including but not limited to, “**Personal Information**” such as: name, address, D.O.B, occupation, driver’s license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) and pricing details.
- 1.6 “Cookies” means small files which are stored on a user’s computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular client and website, and can be accessed either by the web server or the client’s computer. **If the Client does not wish to allow Cookies to operate in the background when ordering from the website, then the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to ordering Goods via the website.**
- 1.7 “Price” means the Price payable (plus any GST where applicable) for the Goods as agreed between Monash Glass and the Client in accordance with clause 5 below.
- 1.8 “GST” means Goods and Services Tax as defined within the “A New Tax System (Goods and Services Tax) Act 1999” (Cth).

2. Acceptance

- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts Delivery of the Goods.
- 2.2 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.
- 2.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
- 2.4 The Client acknowledges that the supply of Goods on credit shall not take effect until the Client has completed a credit application with Monash Glass and it has been approved with a credit limit established for the account.
- 2.5 In the event that the supply of Goods request exceeds the Client’s credit limit and/or the account exceeds the payment terms, Monash Glass reserves the right to refuse Delivery.
- 2.6 Where Monash Glass gives any advice, recommendation, information, assistance or service provided by Monash Glass in relation to Services supplied is given in good faith to the Client or the Client’s agent and is based on Monash Glass’s own knowledge and experience and shall be accepted without liability on the part of Monash Glass. Where such advice or recommendations is not acted upon then Monash Glass shall require the Client or their agent to authorise commencement of the Services in writing. Monash Glass shall not be liable in any way whatsoever for any damages or losses that occur after any subsequent commencement of the Services.
- 2.7 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions (Victoria) Act 2000 or any other applicable provisions of that Act or any Regulations referred to in that Act.

3. Errors and Omissions

- 3.1 The Client acknowledges and accepts that Monash Glass shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
- (a) resulting from an inadvertent mistake made by Monash Glass in the formation and/or administration of this Contract; and/or
 - (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by Monash Glass in respect of the Services.
- 3.2 In the event such an error and/or omission occurs in accordance with clause 3.1, and is not attributable to the negligence and/or wilful misconduct of Monash Glass; the Client shall not be entitled to treat this Contract as repudiated nor render it invalid.

4. Change in Control

- 4.1 The Client shall give Monash Glass not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client’s details (including but not limited to, changes in the Client’s name, address, contact phone or fax number/s, change of trustees, or business practice). The Client shall be liable for any loss incurred by Monash Glass as a result of the Client’s failure to comply with this clause.

5. Price and Payment

- 5.1 At Monash Glass’s sole discretion, the Price shall be either:
- (a) as indicated on any invoice provided by Monash Glass to the Client; or
 - (b) Monash Glass’s 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.
- 5.2 Monash Glass reserves the right to change:
- (a) if a variation to the Goods which are to be supplied is requested; or
 - (b) if a variation to the Services originally scheduled (including any applicable plans or specifications) is requested; or

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- (c) where additional Services are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, ready availability of Goods, inaccurate measurements supplied by the Client, etc.) which are only discovered on commencement of the Services; or
- (d) in the event of increases to Monash Glass in the cost of labour, materials or Goods which are beyond Monash Glass's control.
- 5.3 Variations will be charged for on the basis of Monash Glass's quotation, and will be detailed in writing, and shown as variations on Monash Glass's invoice. The Client shall be required to respond to any variation submitted by Monash Glass within ten (10) working days. Failure to do so will entitle Monash Glass to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.
- 5.4 At Monash Glass's sole discretion, a non-refundable deposit may be required.
- 5.5 Time for payment for the Goods being of the essence, the Price will be payable by the Client on the date/s determined by Monash Glass, which may be:
- (a) on delivery of the Goods;
 - (b) by way of instalments/progress payments in accordance with Monash Glass's payment schedule;
 - (c) thirty (30) days following the end of the month in which Goods are received by delivery and/or collection;
 - (d) the date specified on any invoice or other form as being the date for payment; or
 - (e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by Monash Glass.
- 5.6 Payment may be made by cash, electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Client and Monash Glass.
- 5.7 Monash Glass may in its discretion allocate any payment received from the Client towards any invoice that Monash Glass determines and may do so at the time of receipt or at any time afterwards. On any default by the Client Monash Glass may re-allocate any payments previously received and allocated. In the absence of any payment allocation by Monash Glass, payment will be deemed to be allocated in such manner as preserves the maximum value of Monash Glass's Purchase Money Security Interest (as defined in the PPSA) in the Goods.
- 5.8 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by Monash Glass nor to withhold payment of any invoice because part of that invoice is in dispute.
- 5.9 Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay to Monash Glass an amount equal to any GST Monash Glass must pay for any supply by Monash Glass under this or any other agreement for the sale of the Goods. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition, the Client 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.
- 6. Credit Card Information**
- 6.1 Monash Glass will:
- (a) keep the Client's personal details, including credit card details for only as long as is deemed necessary by Monash Glass;
 - (b) not disclose the Client's credit card details to any third party;
 - (c) not unnecessarily disclose any of the Client's personal information, except in accordance with the Privacy Policy (clause 18) or where required by law.
- 6.2 The Client expressly agrees that, if pursuant to this Contract, there are:
- (a) any unpaid monies; or
 - (b) other amounts due and outstanding by the Client;
- 6.3 Monash Glass is entitled to immediately charge the Client's nominated credit card for these amounts, and is irrevocably authorised to complete any documentation and take any action to recover from the credit card issuer any and all amounts which may be due by the Client pursuant to the terms of this Contract.
- 7. Delivery of Goods**
- 7.1 Delivery ("**Delivery**") of the Goods is taken to occur at the time that:
- (a) the Client or the Client's nominated carrier takes possession of the Goods at Monash Glass's address; or
 - (b) Monash Glass (or Monash Glass's nominated carrier) delivers the Goods to the Client's nominated address even if the Client is not present at the address.
- 7.2 At Monash Glass's sole discretion, the cost of Delivery is in addition to the Price.
- 7.3 Monash Glass may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 7.4 Any time specified by Monash Glass for Delivery of the Goods is an estimate only. The Client must take Delivery by receipt or collection of the Goods whenever they are tendered for Delivery. Monash Glass will not be liable for any loss or damage incurred by the Client as a result of Delivery being late. In the event that the Client is unable to take Delivery of the Goods as arranged then Monash Glass shall be entitled to charge a reasonable fee for redelivery and/or storage.
- 8. Risk**
- 8.1 Risk of damage to or loss of the Goods passes to the Client on Delivery and the Client must insure the Goods on or before Delivery.
- 8.2 If any of the Goods are damaged or destroyed following Delivery but prior to ownership passing to the Client, Monash Glass is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by Monash Glass is sufficient evidence of Monash Glass's rights to receive the insurance proceeds without the need for any person dealing with Monash Glass to make further enquiries.
- 8.3 If the Client requests Monash Glass to leave Goods outside Monash Glass's premises for collection or to deliver the Goods to an unattended location, then such Goods shall be left at the Client's sole risk.
- 8.4 Holes, cut outs and cutting of the Goods may weaken the strength of the Goods and although it's unlikely, cracking may occur. Monash Glass accepts no responsibility against cracks occurring after such Goods (that are subject to holes and cut outs) are installed unless a toughened glass is used.

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- 8.5 The Client acknowledges that Goods supplied may
- (a) exhibit variations in shade, colour, texture, surface, finish, markings and may contain natural fissures, occlusions, lines, indentations and may fade or change colour over time; and
 - (b) expand, contract or distort as a result of exposure to heat, cold, weather; and
 - (c) mark or stain if exposed to certain substances; and
 - (d) be damaged or disfigured by impact or scratching.
- 8.6 The Client agrees to indemnify Monash Glass from any loss or damage caused by any other tradesmen (including but not limited to, incorrect or faulty installation carried out by any other third party) during and after the completion of the Services.

9. Accuracy of Client's Plans and Measurements

- 9.1 Monash Glass shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Client. The Client acknowledges and agrees that in the event that any of this information provided by the Client is inaccurate, Monash Glass accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.
- 9.2 In the event the Client gives information relating to measurements and quantities of the Goods required in completing the Services, it is the Client's responsibility to verify the accuracy of the measurements and quantities, before the Client or Monash Glass places an order based on these measurements and quantities. Monash Glass accepts no responsibility for any loss, damages, or costs however resulting from the Client's failure to comply with this clause.

10. Access

- 10.1 The Client shall ensure that Monash Glass has clear and free access to effect delivery of the Goods. Monash Glass shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of Monash Glass.

11. Compliance with Laws

- 11.1 The Client Monash Glass shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Services and/or Goods.
- 11.2 The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the Goods.

12. Title

- 12.1 Monash Glass and the Client agree that ownership of the Goods shall not pass until:
- (a) the Client has paid Monash Glass all amounts owing to Monash Glass; and
 - (b) the Client has met all of its other obligations to Monash Glass.
- 12.2 Receipt by Monash Glass 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.
- 12.3 It is further agreed that, until ownership of the Goods passes to the Client in accordance with clause 12.1:
- (a) the Client is only a bailee of the Goods and must return the Goods to Monash Glass on request;
 - (b) the Client holds the benefit of the Client's insurance of the Goods on trust for Monash Glass and must pay to Monash Glass the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;
 - (c) the Client 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 Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of any such act on trust for Monash Glass and must pay or deliver the proceeds to Monash Glass on demand;
 - (d) the Client should not convert or process the Goods or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of Monash Glass and must sell, dispose of or return the resulting product to Monash Glass as it so directs;
 - (e) the Client irrevocably authorises Monash Glass to enter any premises where Monash Glass believes the Goods are kept and recover possession of the Goods;
 - (f) Monash Glass may recover possession of any Goods in transit whether or not Delivery has occurred;
 - (g) the Client shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of Monash Glass;
 - (h) Monash Glass may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.

13. Personal Property Securities Act 2009 ("PPSA")

- 13.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 13.2 Upon assenting to these terms and conditions in writing the Client 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 and/or collateral (account) – being a monetary obligation of the Client to Monash Glass for Services – that have previously been supplied and that will be supplied in the future by Monash Glass to the Client.
- 13.3 The Client undertakes to:
- (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which Monash Glass may reasonably require to:
 - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities 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 13.3(a)(i) or 13.3(a)(ii);

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- (b) indemnify, and upon demand reimburse, Monash Glass for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby;
 - (c) not register a financing change statement in respect of a security interest without the prior written consent of Monash Glass;
 - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods and/or collateral (account) in favour of a third party without the prior written consent of Monash Glass;
 - (e) immediately advise Monash Glass of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
- 13.4 Monash Glass and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 13.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 13.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 13.7 Unless otherwise agreed to in writing by Monash Glass, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 13.8 The Client must unconditionally ratify any actions taken by Monash Glass under clauses 13.3 to 13.5.
- 13.9 Subject to any express provisions to the contrary (including those contained in this clause 13), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
- 14. Security and Charge**
- 14.1 In consideration of Monash Glass agreeing to supply the Goods, the Client 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 Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 14.2 The Client indemnifies Monash Glass from and against all Monash Glass's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Monash Glass's rights under this clause.
- 14.3 The Client irrevocably appoints Monash Glass and each director of Monash Glass as the Client's true and lawful attorney/s 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 Client's behalf.
- 15. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)**
- 15.1 The Client must inspect the Goods on delivery or at the time of collection, and shall immediately advise Monash Glass of any scratches or chips, and within seven (7) days of delivery, notify Monash Glass of any alleged defect, (including but not limited to mirrors and/or glass cut, drilled or edge worked incorrectly) or failure to comply with the description or quote. Upon such notification the Client must allow Monash Glass to inspect the Goods. If the Client shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage.
- 15.2 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**).
- 15.3 Monash Glass acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 15.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, Monash Glass makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. Monash Glass's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 15.5 If the Client is a consumer within the meaning of the CCA, Monash Glass's liability is limited to the extent permitted by section 64A of Schedule 2.
- 15.6 For Goods not manufactured by Monash Glass, the warranty shall be the current warranty provided by the manufacturer of the Goods. Monash Glass shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods.
- 15.7 If Monash Glass is required to replace the Goods under this clause or the CCA, but is unable to do so, Monash Glass may refund any money the Client has paid for the Goods.
- 15.8 Subject to this clause 15, returns will only be accepted provided that:
- (a) the Client has complied with the provisions of clause 15.1; and
 - (b) Monash Glass has agreed that the Goods are defective; and
 - (c) the Goods are returned within a reasonable time at the Client's cost (if that cost is not significant); and
 - (d) the Goods are returned in as close a condition to that in which they were delivered as is possible.
- 15.9 Notwithstanding clauses 15.1 to 15.8 but subject to the CCA, Monash Glass 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 Client failing to properly maintain or store any Goods;
 - (b) the Client using the Goods for any purpose other than that for which they were designed;
 - (c) the Client continuing the use of any Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
 - (d) the Client failing to follow any instructions or guidelines provided by Monash Glass;
 - (e) fair wear and tear, any accident, or act of God.
- 15.10 Notwithstanding anything contained in this clause if Monash Glass is required by a law to accept a return then Monash Glass will only accept a return on the conditions imposed by that law.
- 15.11 Subject to clause 15.1, customised, or non-stocklist items or Goods made or ordered to the Client's specifications are not acceptable for credit or return.

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16. Intellectual Property

- 16.1 Where Monash Glass has designed, drawn or developed Goods for the Client, then the copyright in any designs and drawings and documents shall remain the property of Monash Glass. Under no circumstances may such designs, drawings and documents be used without the express written approval of Monash Glass.
- 16.2 The Client warrants that all designs, specifications or instructions given to Monash Glass will not cause Monash Glass to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify Monash Glass against any action taken by a third party against Monash Glass in respect of any such infringement.
- 16.3 The Client agrees that Monash Glass may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which Monash Glass has created for the Client.

17. Default and Consequences of Default

- 17.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at Monash Glass's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 17.2 If the Client owes Monash Glass any money the Client shall indemnify Monash Glass from and against all costs and disbursements incurred by Monash Glass in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Monash Glass's contract default fee, and bank dishonour fees).
- 17.3 Further to any other rights or remedies Monash Glass may have under this Contract, if a Client has made payment to Monash Glass, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by Monash Glass under this clause 17 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this Contract.
- 17.4 Without prejudice to Monash Glass's other remedies at law Monash Glass shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to Monash Glass shall, whether or not due for payment, become immediately payable if:
 - (a) any money payable to Monash Glass becomes overdue, or in Monash Glass's opinion the Client will be unable to make a payment when it falls due;
 - (b) the Client has exceeded any applicable credit limit provided by Monash Glass;
 - (c) the Client 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
 - (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

18. Cancellation

- 18.1 Without prejudice to any other remedies Monash Glass may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions Monash Glass may suspend or terminate the supply of Goods to the Client. Monash Glass will not be liable to the Client for any loss or damage the Client suffers because Monash Glass has exercised its rights under this clause.
- 18.2 Monash Glass may cancel any contract to which these terms and conditions apply or cancel Delivery of Goods at any time before the Goods are delivered by giving written notice to the Client. On giving such notice Monash Glass shall repay to the Client any money paid by the Client for the Goods. Monash Glass shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 18.3 In the event that the Client cancels Delivery of Goods the Client shall be liable for any and all loss incurred (whether direct or indirect) by Monash Glass as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 18.4 Cancellation of orders for Goods made to the Client's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

19. Privacy Policy

- 19.1 All emails, documents, images or other recorded information held or used by Monash Glass is Personal Information, as defined and referred to in clause 19.3, and therefore considered Confidential Information. Monash Glass acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1988 ("the Act") including the Part IIIC of the Act being Privacy Amendment (Notifiable Data Breaches) Act 2017 (NDB) and any statutory requirements, where relevant in a European Economic Area ("EEA"), under the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). Monash Glass acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Client's Personal Information, held by Monash Glass that may result in serious harm to the Client, Monash Glass will notify the Client in accordance with the Act and/or the GDPR. Any release of such Personal Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Client by written consent, unless subject to an operation of law.
- 19.2 Notwithstanding clause 19.1, privacy limitations will extend to Monash Glass in respect of Cookies where transactions for purchases/orders transpire directly from Monash Glass's website. Monash Glass agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Client's:
 - (a) IP address, browser, email client type and other similar details;
 - (b) tracking website usage and traffic; and
 - (c) reports are available to Monash Glass when Monash Glass sends an email to the Client, so Monash Glass may collect and review that information ("collectively Personal Information")In order to enable / disable the collection of Personal Information by way of Cookies, the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable, provided on the website prior to proceeding with a purchase/order via Monash Glass's website.
- 19.3 The Client agrees for Monash Glass to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details

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- or next of kin and other contact information (where applicable), previous credit applications, credit history) about the Client in relation to credit provided by Monash Glass.
- 19.4 The Client agrees that Monash Glass may exchange information about the Client with those credit providers and with related body corporates for the following purposes:
- (a) to assess an application by the Client; and/or
 - (b) to notify other credit providers of a default by the Client; and/or
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
 - (d) to assess the creditworthiness of the Client including the Client's repayment history in the preceding two (2) years.
- 19.5 The Client consents to Monash Glass being given a consumer credit report to collect overdue payment on commercial credit.
- 19.6 The Client agrees that personal credit information provided may be used and retained by Monash Glass for the following purposes (and for other agreed purposes or required by):
- (a) the provision of Goods; and/or
 - (b) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Goods; and/or
 - (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
 - (d) enabling the collection of amounts outstanding in relation to the Goods.
- 19.7 Monash Glass may give information about the Client to a CRB for the following purposes:
- (a) to obtain a consumer credit report;
 - (b) allow the CRB to create or maintain a credit information file about the Client including credit history.
- 19.8 The information given to the CRB may include:
- (a) Personal Information as outlined in 19.3 above;
 - (b) name of the credit provider and that Monash Glass is a current credit provider to the Client;
 - (c) whether the credit provider is a licensee;
 - (d) type of consumer credit;
 - (e) details concerning the Client's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
 - (f) advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Client no longer has any overdue accounts and Monash Glass has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
 - (g) information that, in the opinion of Monash Glass, the Client has committed a serious credit infringement;
 - (h) advice that the amount of the Client's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 19.9 The Client shall have the right to request (by e-mail) from Monash Glass:
- (a) a copy of the Personal Information about the Client retained by Monash Glass and the right to request that Monash Glass correct any incorrect Personal Information; and
 - (b) that Monash Glass does not disclose any Personal Information about the Client for the purpose of direct marketing.
- 19.10 Monash Glass will destroy Personal Information upon the Client's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.
- 19.11 The Client can make a privacy complaint by contacting Monash Glass via e-mail. Monash Glass will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Client is not satisfied with the resolution provided, the Client can make a complaint to the Information Commissioner at www.oaic.gov.au.

20. Unpaid Seller's Rights

- 20.1 Where the Client has left any item with Monash Glass for repair, modification, exchange or for Monash Glass to perform any other Service in relation to the item and Monash Glass has not received or been tendered the whole of the Price, or the payment has been dishonoured, Monash Glass shall have:
- (a) a lien on the item;
 - (b) the right to retain the item for the Price while Monash Glass is in possession of the item;
 - (c) a right to sell the item.
- 20.2 The lien of Monash Glass shall continue despite the commencement of proceedings, or judgment for the Price having been obtained.

21. Service of Notices

- 21.1 Any written notice given under this Contract shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person;
 - (b) by leaving it at the address of the other party as stated in this Contract;
 - (c) by sending it by registered post to the address of the other party as stated in this Contract;
 - (d) if sent by facsimile transmission to the fax number of the other party as stated in this Contract (if any), on receipt of confirmation of the transmission;
 - (e) if sent by email to the other party's last known email address.
- 21.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.

22. Trusts

- 22.1 If the Client at any time upon or subsequent to entering in to the Contract is acting in the capacity of trustee of any trust ("Trust") then whether or not Monash Glass may have notice of the Trust, the Client covenants with Monash Glass as follows:
- (a) the Contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust and the trust fund;

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- (b) the Client has full and complete power and authority under the Trust to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Client against the Trust or the trust fund. The Client will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity;
- (c) the Client will not without consent in writing of Monash Glass (Monash Glass will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
 - (i) the removal, replacement or retirement of the Client as trustee of the Trust;
 - (ii) any alteration to or variation of the terms of the Trust;
 - (iii) any advancement or distribution of capital of the Trust; or
 - (iv) any resettlement of the trust property.

23. General

- 23.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party'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 of Victoria, the state in which Monash Glass has its principal place of business, and are subject to the jurisdiction of the courts in Melbourne, Victoria.
- 23.3 Subject to clause 15, Monash Glass shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by Monash Glass of these terms and conditions (alternatively Monash Glass's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 23.4 Monash Glass may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Client's consent.
- 23.5 The Client cannot licence or assign without the written approval of Monash Glass.
- 23.6 Monash Glass may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of Monash Glass's sub-contractors without the authority of Monash Glass.
- 23.7 The Client agrees that Monash Glass may amend their general terms and conditions for subsequent future contracts with the Client by disclosing such to the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for Monash Glass to provide Goods to the Client.
- 23.8 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.
- 23.9 Both parties warrant that they have the power to enter into this Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.