

**Trend Glass Pty Limited**  
**ABN 42 098 707 898 ACN 098 707 898**  
**Trading Terms and Conditions**

These Trading Terms & Conditions ("Terms and Conditions") apply (unless otherwise previously agreed in writing) to the supply of Goods by Trend Glass to a Customer from time to time. Any supply of Goods by Trend Glass to the Customer made after the date of acceptance of these Terms and Conditions is a supply pursuant to the supply agreement constituted by these Terms and Conditions and the relevant order accepted by Trend and any such supply does not give rise to a new or separate agreement.

**1. SCOPE**

These are terms and conditions (Terms) upon which Trend Glass Pty Limited ABN 42 098 707 898 (Trend Glass) agrees to supply goods and services (Goods) to its customer (Customer).

**2. ACCEPTANCE**

2.1 The Customer acknowledges receipt of these Terms and agrees that all Goods will be supplied by Trend Glass to the Customer on these Terms.

2.2 Any stipulations, terms or conditions contained in the Customer's order form which conflicts with any of these Terms will be inapplicable to any order placed with Trend Glass unless agreed upon in writing by Trend Glass prior to delivery of the Goods.

2.3 Any person who accepts the quotation warrants that for all purposes he is the duly authorised agent of the Customer and if such person is not the duly authorised agent of the Customer then in consideration of Trend Glass performing its obligation under this contract he shall be deemed to be the Customer and be bound by these Terms.

**3. THE CUSTOMER:**

3.1 Agrees that risk in the Goods shall pass to the Customer at the time when the Goods have been placed on the vehicle which is to effect delivery from the premises of Trend Glass and that the Goods shall remain at the Customer's risk at all times unless and until Trend Glass retakes possession of the Goods pursuant to these Terms;

3.2 Agrees to notify Trend Glass in writing prior to any event being a change to the structure, status or partnership, or assignment or sale of business of the Customer. No such event will affect the liability of the Customer named in any application for credit or any Guarantor of any credit granted pursuant to any application for credit, until a fresh application for credit made in the name of the applicant and/or the new entity as restructured or changed is received and approved by Trend Glass;

3.3 Agrees to not use any Goods;

3.3.1 As part of any aircraft of whatsoever nature, or

3.3.2 For any other purpose unless the Customer or any other person establishes by a complete and comprehensive testing procedure that the Goods are fit for that purpose, and also where reasonable, a qualified engineer certifies that the Goods are fit for that purpose;

3.4 The liability of Trend Glass in respect of a breach of a consumer guarantee or any warranty made under these Terms for any Goods not of a kind ordinarily acquired for personal, domestic or household use is limited, to the extent permissible by law and at the option of Trend Glass:

(a) in relation to the Goods, to:

(i) replacing the Goods or the supply of equivalent Goods;

(ii) the repair of the Goods;

(iii) the payment of the cost of replacing the Goods or of acquiring equivalent Goods; or

(iv) the payment of the cost of having the Goods repaired.

(b) in relation to services, to:

(i) the supply of the services again; and

(ii) the payment of the cost of having the services supplied again.

3.5 To the extent permitted by law, all other warranties whether implied or otherwise, not set out in these Terms are excluded and Trend Glass is not liable in contract, tort (including, without limitation, negligence or breach of statutory duty) or otherwise to compensate the Customer for:

(a) any increased costs or expenses;

(b) any loss of profit, revenue, business, contracts or anticipated savings;

(c) any loss or expense resulting from a claim by a third party; or

(d) any special, indirect or consequential loss or damage of any nature whatsoever caused by Trend Glass' failure to complete or delay in completing the order to deliver the Goods.

**4. DELIVERY**

4.1 Any date quoted for delivery of Goods ("the quoted date") is an estimate only and Trend Glass shall not be liable to the Customer for any loss or damage even if arising out of the negligence of Trend Glass for failure to deliver on or before the quoted date. The Customer shall accept and pay for Goods and any GST if and when tendered despite any failure by Trend Glass to deliver by the quoted date. Written advice to the Customer that Goods are ready for delivery whether in whole or in part shall constitute tendering and the terms of payment shall apply.

4.2 Trend Glass shall not be liable to any Customer or any other party for direct or indirect or consequential injury, loss or damage whatsoever by reason or any delay in delivery whether the same is due to the negligence of Trend Glass or any other party, strike or any other industrial action be it of Trend Glass or other party or any other cause whatsoever.

4.3 Trend Glass reserves the right to deliver by instalments. If delivery is made by instalments the Customer shall not be entitled:

(a) to terminate or cancel the contract; or

(b) to any claim, loss or damage howsoever arising from the failure by Trend Glass to deliver any instalments on or before the quoted date.

4.4 Trend Glass shall not be responsible for the delay in delivery caused by, or in any way incidental to an act of God, war, fire, breakages of machinery, strikes or arising out of any other unexpected exceptional cause, or any cause beyond the reasonable control of Trend Glass.

**5. CREDIT CONDITIONS**

- 5.1 The Customer must make payment in full for all Goods by no later than the last business day in the month, following delivery of Goods (i.e. net 30 days).
- 5.2 Unless otherwise agreed in writing, a Customer who has not been granted an approved credit account shall pay a deposit equal to 50% of the net order value (inclusive of GST) upon placement of the order and the balance no later than eight business days prior to the quoted delivery date.
- 5.3 Customers may pay tax invoices issued by the Trend Glass by cash, direct deposit, bank cheque, personal cheque money order, MasterCard or Visa provided that a service fee of 2% will apply to all MasterCard and Visa transactions. Trend Glass also reserves the right to pass on any additional fees that are charged by the credit card companies in relation to the Customer's transaction.
- 5.4 Failure to comply with the above terms of payment will without further notice constitute a breach of contract and Trend Glass may treat the whole contract as repudiated and act accordingly. Trend Glass may, without prejudice to any other rights it may have, refuse to supply or deliver further Goods to the Customer detailed in the quotation or otherwise until such time as the Customer has remedied the default.
- 5.5 Should payment be outstanding beyond the payment terms as outlined in subclause 5.1 or 5.2 as the case may be, the Customer agrees to pay interest on all amounts outstanding from the due date until the date of payment at 2% per month.
- 5.6 If in the opinion of Trend Glass the credit worthiness or credit standing of the Customer alters from that indicated by the Customer in any application for credit executed by the Customer, Trend Glass has the right to immediately stop supply to the Customer without being obligated to give the Customer any reason whatsoever and has the right to demand payment in full for any outstanding account within seven (7) days.
- 5.7 Should Trend Glass exercise its right pursuant to subclause 5.6 Trend Glass may refuse to deliver further supplies to the Customer unless such supplies are paid by the Customer in cash before delivery.
- 5.8 A statement in writing made up from the books of Trend Glass signed by any manager or accountant of Trend Glass as to moneys owing in respect of the account of the Customer at the date mentioned shall be prima facie evidence that such money is so owing.
- 5.9 Should payment remain outstanding beyond the payment terms as outlined in subclause 5.1 or 5.2 the Customer is liable for all costs including legal costs on an indemnity basis incurred by Trend Glass in recovering the amount outstanding.
- 5.10 If the Customer carries on businesses under a business name the Customer shall notify the Company in writing of any change of ownership of the business name within seven days of the change and agrees to indemnify Trend Glass against any loss or damage suffered by Trend Glass as a result of the Customer's failure to notify trend Glass of such change.

## **6. TITLE**

- 6.1 Notwithstanding the delivery of the Goods or part delivery, ownership, title and property of the Goods remains with Trend Glass, who is full legal and equitable owner until such time as the Customer shall have paid Trend Glass the full price together with the full price of any Goods then the subject of any other contract with Trend Glass.
- 6.2 The Customer acknowledges that they receive possession of and hold the Goods delivered by Trend Glass solely as bailee for Trend Glass until such time as the full price including any GST is paid to Trend Glass together with the full price including any GST of any Goods then the subject of any other contract with Trend Glass.
- 6.3 Until such time as the Customer becomes the owner of the Goods, they will;
  - (a) store them on the premises separately;
  - (b) ensure that the Goods are kept in good and serviceable condition;
  - (c) secure the Goods from risk, damage and theft; and
  - (d) keep the Goods fully insured against such risks that are usual or common to insure against in a business of a similar nature to that of the Customer.
- 6.4 Until the goods are paid for in full including any GST:
  - (a) Trend Glass authorises the Customer to sell the goods as its agent however, the Customer shall not represent to any third parties that it is acting in any way for Trend Glass and Trend Glass will not be bound by any contracts with third parties to which the Customer is a party.
  - (b) The proceeds of any sale of the Goods shall be paid into a separate account and held in trust for Trend Glass. The Customer shall account to Trend Glass from this fund for the full price of the goods including any GST.
  - (c) The Customer is entitled to a period of credit, but if prior to the expiration of the period of credit the goods are sold and the proceeds of sale are received by the Customer then the Customer shall account to Trend Glass for the price of the goods including any GST.
  - (d) Should the customer die, stop payment or call a meeting of its creditors or become insolvent or subject to the bankruptcy laws, or being a company, appoints an administrator or calls a meeting for the purpose of or to go into liquidation or has a winding-up application presented against it or has a receiver appointed, Trend Glass may at its option despite its waiver of such default or failure and without prejudice to its other rights under this contract, suspend or cancel this contract or require payment in cash before or on delivery or tender of goods notwithstanding the terms of payment previously specified, or may repossess and take over the Goods and dispose of them in its own right without prejudice to any claim it may have for damages for any loss resulting from such resale.
- 6.6 If the Customer does not pay for any Goods on the due date then Trend Glass is hereby irrevocably authorised by the Customer to enter the Customer's premises (or any premises under the control of the Customer or as agent of the Customer in which the goods are stored) and use reasonable force to take possession of the goods without liability for the tort of trespass, negligence, assault and battery or payment of any compensation to the customer whatsoever.
- 6.7 In the event that the Customer uses the Goods in some manufacturing or construction process of its own or some third party, then the Customer must hold such part of the proceeds of sale of such manufacturing or construction process as relates to the Goods in trust for Trend Glass. Such part will be an amount equal in dollar terms to the amount owing by the Customer to Trend Glass at the time of the receipt of such proceeds. The Customer will pay Trend Glass such funds held in trust upon the demand of Trend Glass.

## **7. PERSONAL PROPERTY SECURITIES ACT**

- 7.1 Defined terms in this clause have the same meaning as given to them in the PPSA.
- 7.2 Trend Glass and Customer acknowledge that these Conditions constitute a Security Agreement and gives rise to a Purchase Money Security Interest (PMSI) in favour of Trend Glass over the Goods supplied or to be supplied to the Grantor pursuant to these Conditions.
- 7.3 The Goods supplied or to be supplied under these Conditions fall within the PPSA classification of "Other Goods" acquired by the Customer pursuant to these Conditions.
- 7.4 Trend Glass and the Customer acknowledge that Trend Glass, as Secured Party, is entitled to register its interest in the Goods supplied or to be supplied to the Customer as Grantor under these Conditions on the PPSA Register as Collateral.
- 7.5 To the extent permissible at law, the Customer:
  - (a) waives its right to receive notification of or a copy of any Verification Statement confirming registration of a Financing Statement or a Financing Change Statement relating to a Security Interest granted by the Customer, as Grantor, to Trend Glass.

- (b) agrees to indemnify Trend Glass on demand for all costs and expenses, including legal costs and expenses on a solicitor / client basis, associated with the;
  - (i) registration or amendment or discharge of any Financing Statement registered by or on behalf of Trend Glass; and
  - (ii) enforcement or attempted enforcement of any Security Interest granted to Trend Glass by the Customer.
- (c) agrees that nothing in sections 130 to 143 of the PPSA will apply to these Conditions or the Security under these Conditions;
- (d) agrees to waive its right to do any of the following under the PPSA:
  - (i) receive notice of removal of an Accession under section 95;
  - (ii) receive notice of an intention to seize Collateral under section 123;
  - (iii) object to the purchase of the Collateral by the Secured Party under section 129;
  - (iv) receive notice of disposal of Collateral under section 130;
  - (v) receive a Statement of Account if there is no disposal under section 130(4);
  - (vi) receive a Statement of Account under section 132(3)(d) following a disposal showing the amounts paid to other Secured Parties and whether Security Interests held by other Secured Parties have been discharged.
  - (vii) receive notice of retention of Collateral under section 135;
  - (viii) redeem the Collateral under section 142; and
  - (ix) reinstate the Security Agreement under section 143.

## **8. CLAIMS**

- 8.1 Trend Glass shall not be liable for any loss or damage whatsoever and however arising whether direct or indirect or consequential or in respect of any claim whenever and however made for any loss or damage, deterioration, deficiency or other fault or harm in the Goods provided by or on behalf of or in any arrangement with Trend Glass or occasioned to the Customer or any third party or to his or their property or interest and whether or not due to the negligence of Trend Glass, its servants or agents.
- 8.2 As soon as any of the facts or matters which form any part of any claim or complaint whatsoever become known to the Customer, the Customer must within seven (7) days notify Trend Glass in writing of the same.
- 8.3 Trend Glass will not be liable in any circumstances for any:
  - (a) defects or damages caused in whole or in part by misuse, abuse, neglect, improper application, repair or alteration (other than by Trend Glass) or accident;
  - (b) transport, installation removal, labour or other costs;
  - (c) details in Goods not manufactured by it;
  - (d) technical advice or assistance given or rendered by it to the Customer or not in connection with the manufacture, construction or supply of Goods for or to the Customer.

## **9. FORCE MAJEURE**

If by reason of any fact, circumstance, matter or thing beyond the reasonable control of Trend Glass, Trend Glass is unable to perform in whole or in part any obligation under this contract, Trend Glass shall be relieved of that obligation under this contract to the extent and for the period that it is so unable to perform and shall not be liable to the Customer in respect of such inability.

## **10. LIEN AND CHARGE**

- 10.1 The Customer hereby acknowledges and agrees that Trend Glass has a lien over all Goods in its possession belonging to the Customer to secure payment of any or all amounts outstanding from time to time.
- 10.2 The Customer hereby charges all real estate owned by the Customer at any time in respect of any monies that may hereinafter be owing to Trend Glass under this contract by the Customer or otherwise and hereby authorises Trend Glass or its solicitors to execute any consent form as its attorney for the purpose of registering a caveat over the title to any real estate owned by the Customer at any time.

## **11. PATENTS**

- 11.1 Where goods are manufactured to the Customer's specification, the Customer indemnifies and keeps indemnified Trend Glass against any liability to or action by a third party for infringement or alleged infringement of a patent, registered design, trademark or copyright arising from Trend Glass complying with the Customer's specification.
- 11.2 No right or licence is granted to the Customer to use any patent, copyright, registered design, trademark or other intellectual property right of Trend Glass or otherwise.

## **12. ASSIGNMENT**

This contract cannot be assigned or transferred to any third party without Trend Glass' written consent.

## **13. VARIATION**

These conditions may be altered only by Trend Glass. Such alterations must be in writing and be signed by the duly authorised management and no other employee.

## **14. JURISDICTION**

This contract for the supply of the Goods is deemed to have been entered into in the capital city of the State from which the Goods have been supplied and the Customer irrevocably submits to the jurisdiction of the Courts of the capital city of that State.

TG920\_ September 2014