

CHEVRON GLASS PTY LTD

TERMS AND CONDITIONS OF SALE

OVERVIEW

Application of these terms

These terms and conditions of sale apply to any supply of goods and/or services by Chevron Glass Pty Ltd to any person including bodies corporate (“**Customer**”).

Commencement

Chevron Glass Pty Ltd may from time to time give a Customer a quotation or price for goods and/or services which will be supplied to the Customer by Chevron Glass Pty Ltd. When Chevron Glass Pty Ltd and the Customer first agree that Chevron Glass Pty Ltd will supply goods and/or services and the Customer will purchase goods and/or services for an agreed price, the Agreement commences. On commencement, the Agreement between Chevron Glass Pty Ltd and the Customer consists of the following terms and conditions, as well as the contract price given by Chevron Glass Pty Ltd prior to provision of goods and/or services and any express written warranty which applies to the particular goods and/or services offered by Chevron Glass Pty Ltd.

Subsequent purchases are variations of this Agreement

Any subsequent agreements for the Customer to purchase and Chevron Glass Pty Ltd to supply goods and/or services are variations of the Agreement. The Agreement is varied only to the extent necessary to accommodate the new terms agreed by the parties. That is, the Customer, by placing an order and Chevron Glass Pty Ltd by accepting that order, agree to vary the Agreement so as to require Chevron Glass Pty Ltd to supply the goods and/or services ordered and for the Customer to pay the agreed price for those goods and/or services. If an express written warranty applies to the particular goods and/or services purchased by the Customer, then the terms of that express written warranty are incorporated into this Agreement but only apply to goods and/or services of the relevant type which were supplied by Chevron Glass Pty Ltd with the express written warranty that was current at the time of the supply.

A breach of this Agreement is not cured by a subsequent variation and a breach in relation to one order affects all other orders

If a party is in breach of this Agreement prior to a variation, that party will continue to be in breach following the variation unless that breach is specifically addressed and remedied by the variation. It is the intention of the parties to this Agreement that if a party has breached this Agreement in relation to a particular order then the parties will be entitled to act on that breach in relation to all other orders between Chevron Glass Pty Ltd and the Customer in accordance with the following terms and conditions.

End of this Agreement

This Agreement ends when it is terminated in accordance with the following terms and conditions. Operative provisions prevail over the Overview in case of inconsistency.

OPERATIVE PROVISIONS

1. Customer Details

The Customer warrants that any details of the Customer including, but not limited to, the name, address and principal place of business of the Customer or the identities of officers or agents of the Customer or email addresses, facsimile numbers or telephone numbers of the Customer which have been provided to Chevron Glass Pty Ltd are accurate. This warranty is given each time Chevron Glass Pty Ltd accepts an order from the Customer or otherwise agrees to supply goods and/or services to the Customer.

2. Initial Order establishes this Agreement

When Chevron Glass Pty Ltd first accepts an order by the Customer for goods and/or services or otherwise agrees to supply goods and/or services to the Customer, the Customer and Chevron Glass Pty Ltd enter into this Agreement which is comprised of the following:

- 2.1. These terms and conditions;
- 2.2. Any written warranty offered by Chevron Glass Pty Ltd in relation to the particular goods and/or services ordered by the Customer;
- 2.3. If there is a written quotation or price given by Chevron Glass Pty Ltd which has been accepted by the Customer, that written quotation and, if the quotation refers to a Specification, that Specification;
- 2.4. If Chevron Glass Pty Ltd has published a standard price in writing for the goods and/or services requested by the Customer and there is no written quotation or other agreement on price or if Chevron Glass Pty Ltd has indicated that its standard prices will apply to the supply, that written standard price; and
- 2.5. If there is no relevant written quotation or price but clear obligations to exchange goods and/or services for payment have been arrived at in the course of negotiation but have not been expressed in writing, those obligations are included as terms and conditions of this Agreement.

Nothing in this clause 2 prevents the parties to this Agreement reaching agreement upon the prices that will apply as between themselves.

3. Subsequent Orders vary this Agreement

Upon acceptance by Chevron Glass Pty Ltd of any subsequent orders from the Customer for goods and/or services, Chevron Glass Pty Ltd and the Customer agree to vary this Agreement such that:

- 3.1. There is an additional obligation on Chevron Glass Pty Ltd to supply the goods and/or services described in the order in accordance with the existing terms of this Agreement;
- 3.2. There is an additional obligation on the Customer to make payment to Chevron Glass Pty Ltd of the amount specified in the order in accordance with the existing terms of this Agreement;
- 3.3. Existing obligations of the parties remain in force, including any obligations of which either party is in breach; and
- 3.4. If a party is in breach of one or more of its obligations under this Agreement prior to variation of the Agreement under this clause 3, those breaches will not be remedied by the variation, rights in relation to the breach will not be taken to be waived as a result of the variation

and the party entitled to act on the breach will not be taken to have acquiesced in the breach as a result of the variation. It is the express intention of the parties that a breach by one party in relation to a particular order may be relied on by the other party in relation to any and all other orders in place between the Customer and Chevron Glass Pty Ltd.

4. Specifications supplied by Customer

4.1. In the event that a Specification is to be supplied by the Customer:

- 4.1.1. The Customer shall supply the Specification prior to Chevron Glass Pty Ltd providing a quotation;
- 4.1.2. All Specifications submitted to Chevron Glass Pty Ltd are approximate only and any deviation from any of them does not vitiate any contract with Chevron Glass Pty Ltd or form grounds for any claim against Chevron Glass Pty Ltd provided that such deviations do not render the goods unsuitable for their normal or specified purpose;
- 4.1.3. Chevron Glass Pty Ltd will endeavour to comply with any subsequent requests for additions to or alterations of any Specifications but shall be under no obligation to do so and may require payment of an additional charge in respect of any such addition or alteration to which Chevron Glass Pty Ltd may agree; and
- 4.1.4. The Customer acknowledges that Chevron Glass Pty Ltd shall not be responsible for errors in Specifications or proofs provided by the Customer.

5. The Contract Price

Chevron Glass Pty Ltd will render invoices to the Customer for the agreed price of the goods and/or services supplied or to be supplied by Chevron Glass Pty Ltd to the Customer. All invoices are due to be paid in full on the last day of the calendar month following the month of Chevron Glass Pty Ltd's statement of invoices. The parties may change the amount or manner of payment by written agreement from time to time.

6. Delivery

- 6.1. The parties acknowledge that any time of delivery specified by Chevron Glass Pty Ltd is an estimate only and that time is not of the essence unless otherwise agreed;
- 6.2. The Customer shall complete pick up of goods within seven (7) days of receipt of notice from Chevron Glass Pty Ltd that the goods are ready for collection;
- 6.3. In the event that the Customer fails to complete pick up of goods in accordance with this clause 6, Chevron Glass Pty Ltd may, at its sole discretion, charge storage fees;
- 6.4. Chevron Glass Pty Ltd may at its option deliver the goods to the Customer in any number of instalments unless otherwise agreed;
- 6.5. If Chevron Glass Pty Ltd delivers any of the goods by instalments and any one of those instalments is defective for any reason:
 - 6.5.1. it is not a repudiation of this Agreement; and
 - 6.5.2. the defective instalment is a severable breach that gives rise only to a claim for compensation.

7. GST

Any monetary amount expressed to be payable by the Customer to Chevron Glass Pty Ltd is exclusive of GST unless otherwise stated. In the event that goods and/or services supplied by Chevron Glass Pty Ltd to the Customer are a taxable supply, the Customer must pay to Chevron Glass Pty Ltd the GST payable in respect of taxable supplies made by Chevron Glass Pty Ltd to the

Customer. "GST" means goods and services tax arising pursuant to the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and "taxable supply" has a corresponding meaning.

8. Cessation of Supply

- 8.1. In the event that the Customer defaults in the payment of any monies due under this Agreement or Chevron Glass Pty Ltd has *bona fide* doubts about the solvency of the Customer, then Chevron Glass Pty Ltd may refuse delivery of any of the goods remaining to be delivered and/or all monies due to Chevron Glass Pty Ltd shall immediately become due and payable.
- 8.2. In the event that the Customer is able to establish, to the reasonable satisfaction of Chevron Glass Pty Ltd, that it is solvent, then monies due to Chevron Glass Pty Ltd under clause 8.1 will be payable on the dates that those amounts would have been payable if that clause had not applied and any interest which has accrued by reason of the application of that clause will be reversed.
- 8.3. Without limiting any of the other provisions hereof, Chevron Glass Pty Ltd may in its absolute discretion resume delivery of goods which Chevron Glass Pty Ltd previously refused to deliver pursuant to clause 8.1.
- 8.4. If the Customer is a natural person and the goods are acquired for personal, domestic or household use then Chevron Glass Pty Ltd must give the Customer 14 days notice of its intention to exercise its rights under clause 8.1 during which time the Customer may provide Chevron Glass Pty Ltd with evidence of their solvency.

9. Interest on Outstanding Payments

Chevron Glass Pty Ltd shall be entitled to charge interest on all amounts not paid by the due date for payment and the Customer must pay any interest so charged. Interest will apply unless Chevron Glass Pty Ltd gives written notice to the Customer that it does not intend to charge interest for a specified period or on specified conditions. Such interest shall be compound interest calculated on a daily basis from the due date of payment until the date Chevron Glass Pty Ltd receives payment at a rate of interest up to but not exceeding nine per cent (9%) per annum and in the absence of written notice to the contrary given by Chevron Glass Pty Ltd to the Customer the interest rate will be taken to be 9% per annum.

10. Reservation of Title

- 10.1. Subject to any applicable law including the *Personal Property Securities Act 2009* (Cth) ("**PPSA**"), Chevron Glass Pty Ltd retains legal ownership of the goods until it receives payment from the Customer in full.
- 10.2. In the event that the Customer purports to sell goods to which it has not yet obtained legal title ("**Retained Goods**") to its customer ("**sub-Purchaser**"), the Customer must, within 7 days, notify Chevron Glass Pty Ltd of this transaction and provide details of the Retained Goods which the Customer purports to sell, the proposed sale price of the Retained Goods ("**Proposed Sale Price**") and whether the sub-Purchaser has been given notice of this Agreement.
- 10.3. Chevron Glass Pty Ltd may, in its absolute discretion, transfer legal title in the Retained Goods to the Customer for the purpose of allowing the Customer to complete the purported sale of the Retained Goods or, subject to the agreement of the sub-Purchaser, Chevron Glass Pty Ltd may sell the Retained Goods to the sub-Purchaser on such terms as it sees fit. The Customer indemnifies Chevron Glass Pty Ltd for its reasonable costs incurred in exercising its discretion under this clause 10.3. For the avoidance of doubt, subject to the

- exercise of the discretion in this clause 10.3, Chevron Glass Pty Ltd retains legal title in the goods notwithstanding any purported sale of same to a sub-Purchaser by the Customer.
- 10.4. In the event that Chevron Glass Pty Ltd opts to sell goods directly to the sub-Purchaser, the Customer is released from its obligation to make payment in relation to the Retained Goods and Chevron Glass Pty Ltd is released from its obligation to supply the Retained Goods to the Customer. In the event that the Retained Goods were partly paid, Chevron Glass Pty Ltd may retain this amount for a period of 90 days but the Customer may offset future payments against this retained monies. If no further payments fall due to Chevron Glass Pty Ltd from the Customer within that 90 day period, Chevron Glass Pty Ltd must repay the retained monies to the Customer.
- 10.5. If the Customer has not fully paid for the goods but purports to sell or otherwise dispose of them to a sub-Purchaser and Chevron Glass Pty Ltd elects to transfer title to the Customer in accordance with clause 10.3 so as to allow the Customer to complete the transaction with the sub-Purchaser, any sale proceeds or monies received by the Customer in respect of disposal will immediately upon receipt by the Customer be deposited into a bank account established solely for the purpose of holding such monies and into which no other monies will be paid. Those proceeds or monies will be held by the Customer as trustee for Chevron Glass Pty Ltd until actually paid to Chevron Glass Pty Ltd. If the Retained Goods were partly paid, then the amount of money which is to be held in trust for Chevron Glass Pty Ltd under this clause is reduced by the amount which was partly paid.
- 10.6. The Customer may refuse a transfer of title in the Retained Goods under clause 10.3 but it will nevertheless obtain legal title in the Retained Goods in the event that full payment of the purchase price for those Retained Goods is made. In the event that the Customer accepts such a transfer of legal title, the Customer agrees that it will sell the Retained Goods to the sub-Purchaser for an amount not less than the Proposed Sale Price. The Customer will be liable to pay Chevron Glass Pty Ltd the greater of the initial purchase price of the Retained Goods as between the Customer and Chevron Glass Pty Ltd or the Proposed Sale Price. If the Retained Goods were partly paid, the amount partly paid may be set off against the Customer's liability under this clause.
- 10.7. In the event that the Retained Goods have been combined with or incorporated into other goods or are otherwise provided together with goods not originating from Chevron Glass Pty Ltd then the provisions of clause 10.5 will apply to so much of the sale proceeds or monies as correspond to the market value of goods legally owned by Chevron Glass Pty Ltd at the time of the Customer's purported sale to the sub-Purchaser. In the event that the Customer receives non-monetary consideration for the goods, the Customer holds the value in money of that non-monetary consideration on trust for Chevron Glass Pty Ltd or, if it is not practical to determine the value of the non-monetary consideration, the Customer holds the non-monetary consideration as trustee for the benefit of Chevron Glass Pty Ltd. If the Retained Goods were partly paid, the amount of money or value of non-monetary consideration which is to be held in trust is reduced by the amount paid on the Retained Goods.
- 10.8. While Chevron Glass Pty Ltd retains legal title in the Retained Goods under this clause 10, Chevron Glass Pty Ltd has the right (without prejudice to any other rights and remedies it may have) to recover, detach, remove and/or resell the Retained Goods or any part of them. For that purpose, Chevron Glass Pty Ltd's agents or employees ("**Collectors**") may without notice enter any place Chevron Glass Pty Ltd believes the Retained Goods to be ("**Location of Goods**").

- 10.9. Chevron Glass Pty Ltd will not be liable for and the Customer will indemnify Chevron Glass Pty Ltd against any costs, claims, damages or losses expended or suffered by Chevron Glass Pty Ltd in recovering any outstanding payment due from the Customer including the cost of repossession and re-sale of the Retained Goods. Without limiting the scope of this indemnity, the Customer indemnifies Chevron Glass Pty Ltd against any claims in relation to damage to goods or property arising from the recovery, detachment or removal of the Retained Goods from the Location of Goods.
- 10.10. To the extent that the Customer is able to do so, the Customer must give the Collectors the benefit of any right of entry which the Customer has in relation to the Location of Goods with the intention that any entry by the Collectors on to the Location of Goods shall be lawful. In the event that entry by the Collectors cannot be made lawful because the Customer does not itself have the right to enter the Location of Goods or for any other reason then, without limiting the scope of the indemnity granted by clause 10.9, that indemnity applies to any loss suffered by Chevron Glass Pty Ltd or the Collectors as a result of entry onto the Location of Goods.
- 10.11. Goods in the possession or control of the Customer answering the description of goods that have been supplied in the past by Chevron Glass Pty Ltd to the Customer will, in the absence of the Customer proving conclusively to the contrary, be deemed to be goods to which these terms apply.

11. Guarantees, Liens and Charges

- 11.1. Chevron Glass Pty Ltd shall be entitled at any stage and during the continuance of this Agreement to request such security or additional security as Chevron Glass Pty Ltd shall in its discretion think fit and shall be entitled to withhold supply of any goods or credit arrangements until security or additional security shall be obtained. In the event that the Customer is a natural person and the goods are acquired for personal, domestic or household use, Chevron Glass Pty Ltd is only entitled to reasonable security but there is a rebuttable presumption that any security requested by Chevron Glass Pty Ltd is reasonable.
- 11.2. If the Customer is or becomes an owner of land, the Customer charges its interest or interests in such land with payment of amounts outstanding under this Agreement. These charges are created when the Customer incurs a liability under this Agreement or when the Customer acquires land. The Customer agrees to do all things necessary to enter into a registered mortgage over such land on the terms and conditions contained in Chevron Glass Pty Ltd's standard terms and conditions of mortgage. Chevron Glass Pty Ltd will prepare and file the mortgage documents at its expense.
- 11.3. The Customer agrees, permits and authorizes Chevron Glass Pty Ltd to register a caveat over any land now owned by the Customer or in the future acquired by the Customer to secure any monies payable under this Agreement.
- 11.4. Chevron Glass Pty Ltd's rights under clauses 11.2 and 11.3 remain in force following the termination of this Agreement until such time as all amounts outstanding under this Agreement are paid by the Customer.

12. Personal Property Securities Act

- 12.1. In the event that the PPSA applies to a grant of security under this Agreement including any retention of title under clause 10 herein:
 - 12.1.1. In the event that any thing is used as collateral for a security interest held by Chevron Glass Pty Ltd within the meaning of the PPSA and is not predominantly used for personal, domestic or household use, the enforcement provisions listed

in s115 of the PPSA are excluded from application to that collateral to the full extent permitted under the PPSA other than the following sections: s117, s118, s123, s126, s128, s129 and all of Division 6 of Part 4.3 of the PPSA.

- 12.1.2. If the Customer grants Chevron Glass Pty Ltd a security interest in collateral which is predominantly used for personal, domestic or household use the Customer must give written notice to Chevron Glass Pty Ltd of that predominant use within 14 days of the grant of the security interest. In the event that the Customer does not give such a notice, the Customer represents to Chevron Glass Pty Ltd that the collateral is not predominantly used for personal, domestic or household use.
- 12.1.3. The Customer will do all things reasonably required of the Customer by Chevron Glass Pty Ltd to allow Chevron Glass Pty Ltd to register its security interest under the PPSA.
- 12.1.4. The Customer will reimburse Chevron Glass Pty Ltd for maintenance fees payable by Chevron Glass Pty Ltd under s168 of the PPSA.

13. Intellectual Property

- 13.1. The Specification and design of the goods including sketches, drafts or templates (being all intellectual property, including but not limited to, copyright, design right or other intellectual property) remains the property of Chevron Glass Pty Ltd, unless such was provided by the Customer under clause 4 of this Agreement.
- 13.2. The Customer warrants that any Specifications or other intellectual property furnished or given by the Customer do not infringe any rights in intellectual property owned by any third party.
- 13.3. The Customer agrees to indemnify Chevron Glass Pty Ltd against all actions, demands, costs and losses however arising from the use of Specifications or other intellectual property furnished or given by the Customer which infringe any rights in intellectual property owned by any third party.

14. Indemnity

The Customer will keep Chevron Glass Pty Ltd and its workers, contractors and agents (members of these classes of persons being “**the Indemnified Persons**”) fully indemnified against all actions, demands, costs and losses however arising from the use of the goods by the Customer’s workers, contractors and agents.

15. No Liability and indemnities offered by Customer

- 15.1. The Customer indemnifies Chevron Glass Pty Ltd and the Indemnified Persons against any liability in tort, contract or of any other nature for any direct or indirect loss suffered by any person including without limitation claims for damage to or contamination, deterioration, delivery to the wrong address, non-delivery or delay in delivery of the goods or for any injury, loss or damage, direct or indirect, to any person or real or personal property arising in any way in connection with the carriage of the goods whether due to any action or inaction by Chevron Glass Pty Ltd or any other person or otherwise. The Customer agrees that Chevron Glass Pty Ltd and the Indemnified Persons are in any event not liable to the Customer in relation to any of the matters referred to in this clause 15.1.
- 15.2. Without limiting any other provisions hereof, Chevron Glass Pty Ltd will not be liable for any direct or indirect loss or damage relating to or stemming from contamination or deterioration of the goods due to any event of force majeure as referred to in clause 21.5

and the Customer indemnifies Chevron Glass Pty Ltd and the Indemnified Persons against any claims or demands in relation to such loss or damage.

- 15.3. All protections, limitations or exclusions of liability and/or indemnities for the benefit of Chevron Glass Pty Ltd and the Indemnified Persons in this Agreement will continue to have full force despite any tort or breach of contract by Chevron Glass Pty Ltd, even if such tort or breach of contract was outside the contemplation or expectation of the parties or any other person entitled to the benefit of this Agreement when the Agreement was made.
- 15.4. In the event that Chevron Glass Pty Ltd makes available or sends documents to the Customer including, without limitation, invoices, quotations and directions by electronic means including, without limitation, a communication of information in the form of data, text or images by means of guided and or unguided electromagnetic energy, including by means of the internet ("**Electronic Communication**"), Chevron Glass Pty Ltd will not be liable in respect of:
 - 15.4.1. any error, omission or loss of confidentiality arising from an Electronic Communication;
 - 15.4.2. any unauthorised copying, recording or interference with a document;
 - 15.4.3. any delay or non-delivery of a document; or
 - 15.4.4. any damage caused to the Customer's system or files by such Electronic Communication (including any computer virus).
- 15.5. The provisions of clauses 14 and 15 only have effect to the extent permitted by applicable law.

16. Warranty

- 16.1. Chevron Glass Pty Ltd warrants that goods will be free from defect due to faulty materials or Chevron Glass Pty Ltd's workmanship for a period of 12 months from the date of purchase by end users or for 18 months from the date of sale to the Customer if the Customer is not an end user, whichever is the shorter. Chevron Glass Pty Ltd's liability in respect of this warranty is limited to repair or replacement (at Chevron Glass Pty Ltd's option) of the faulty goods. The Customer must notify its customers of the terms of this warranty.
- 16.2. Any goods the subject of a warranty claim must be returned to Chevron Glass Pty Ltd. Chevron Glass Pty Ltd will not be liable for freight costs and goods are at all times at the risk of the person making the warranty claim unless and until Chevron Glass Pty Ltd elects to replace those goods.
- 16.3. Unless Chevron Glass Pty Ltd otherwise expressly agrees in writing, the warranty described in clause 16.1 is the only warranty given by Chevron Glass Pty Ltd and any warranty which may otherwise be implied at law or by statute is, to the extent permitted by such statutes or laws, excluded from this Agreement.
- 16.4. In the event that the Australian Consumer Law applies, this warranty is in addition to the remedies available to the Customer under that law except to the extent that any such remedies are excluded or limited by these terms and conditions.

17. Claims against Chevron Glass Pty Ltd

- 17.1. No claim in respect of loss or damage to the goods or otherwise arising out of this Agreement may be made unless all charges invoiced by Chevron Glass Pty Ltd have been paid in full and notice of the claim is given to Chevron Glass Pty Ltd at its address within 7 days after delivery was effected or would in the ordinary course of business have been

effected or the circumstances arose or event occurred which it is alleged gives rise to the claim.

- 17.2. Without limiting any of the provisions in this Agreement which exclude or limit Chevron Glass Pty Ltd's liability, Chevron Glass Pty Ltd will, to the extent permitted by applicable laws, in any event be discharged from all liability whatsoever in respect of the goods or otherwise under this Agreement unless suit is brought within 6 months from the delivery of goods or from the date on which in the ordinary course of business delivery would have been effected or from the date of occurrence of the circumstance or event alleged to give rise to a claim.
- 17.3. The Customer will bear the cost of any warranty claims made in relation to clause 16 herein.
- 17.4. In the event that the Australian Consumer Law applies: Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.

18. Limitation of statutory liabilities

- 18.1. To the extent permitted by applicable law, in respect of goods and/or services not ordinarily acquired for personal, domestic or household use or consumption Chevron Glass Pty Ltd's liability for breach of consumer guarantees under the *Competition and Consumer Act 2010* (Cth) is limited to:
 - 18.1.1. In the case of goods, whichever Chevron Glass Pty Ltd chooses out of:
 - 18.1.1.1. the replacement of the goods or the supply of equivalent goods;
 - 18.1.1.2. the repair of the goods;
 - 18.1.1.3. the payment of the cost of replacing the goods or of acquiring equivalent goods; or
 - 18.1.1.4. the payment of the cost of having the goods repaired.
 - 18.1.2. In the case of services, whichever Chevron Glass Pty Ltd chooses out of:
 - 18.1.2.1. the supplying of the services again; or
 - 18.1.2.2. the payment of the cost of having the services supplied again.

19. Assignment

The Customer may not assign any of its rights under this Agreement without the written consent of Chevron Glass Pty Ltd, which consent may be withheld at Chevron Glass Pty Ltd's absolute discretion. A change in the persons in effective management or control of the Customer is deemed an assignment.

20. Termination

- 20.1. Without prejudice to any other rights which Chevron Glass Pty Ltd has, Chevron Glass Pty Ltd may terminate this Agreement immediately by giving written notice to the Customer if:
 - 20.1.1. any payments due from the Customer to Chevron Glass Pty Ltd under this Agreement are more than 10 business days overdue (whether or not Chevron Glass Pty Ltd has demanded payment);
 - 20.1.2. the Customer is presumed insolvent within the meaning of Section 459C(2) of the *Corporations Act 2001* (Cth);
 - 20.1.3. the Customer commits an act of bankruptcy;

- 20.1.4. the Customer is placed into, or any of its assets are subject to, external administration or if any proceedings are issued or an event occurs intended to lead to any of those consequences or if any other action relating to insolvent debtors occurs in relation to the Customer or if the Customer ceases to carry on its existing business;
 - 20.1.5. any judgment is entered against the Customer for a sum of not less than \$5,000 and is not satisfied by the Customer within 14 days of being entered; or
 - 20.1.6. the Customer breaches any of the terms of this Agreement and within 7 days of receiving a notice from Chevron Glass Pty Ltd specifying the breach, has not remedied it.
- 20.2. The Customer may terminate this Agreement:
- 20.2.1. if Chevron Glass Pty Ltd is in breach of its obligations under this Agreement and does not, within 21 days after receiving written notice from the Customer of a breach of this Agreement, remedy that breach; or
 - 20.2.2. if there are no amounts outstanding to Chevron Glass Pty Ltd, the Customer may give Chevron Glass Pty Ltd 7 days written notice that it does not intend to purchase any more goods and/or services from Chevron Glass Pty Ltd in the future and this Agreement will at the end of those 7 days be terminated provided that upon the date of termination there is no amount outstanding from the Customer to Chevron Glass Pty Ltd under this Agreement.

21. General Provisions and Interpretation

- 21.1. Interpretation: Unless qualified by or inconsistent with the context:
 - 21.1.1. a reference to one gender includes both genders;
 - 21.1.2. reference to a person includes an incorporated body or other association of persons or a governmental agency and vice versa;
 - 21.1.3. the singular includes the plural and vice versa;
 - 21.1.4. headings are for convenience of reference only and will not affect the interpretation of this Agreement;
 - 21.1.5. "Agreement" means the agreement between the parties with terms defined by the documents referred to in clause 2 herein including any variations in accordance with clause 3 herein or otherwise;
 - 21.1.6. "Australian Consumer Law" means Schedule 2 of the *Competition and Consumer Act 2010 (Cth)*;
 - 21.1.7. "Collectors" has the meaning given to it in clause 10.8;
 - 21.1.8. "Customer" has the meaning given to it in the Overview;
 - 21.1.9. "delivery" means making the goods available to the Customer so that the Customer is able to take possession of the goods and is not limited to physically depositing the goods at a particular location;
 - 21.1.10. "Electronic Communication" has the meaning given to it in clause 15.4;
 - 21.1.11. "goods" means all goods of whatsoever description;
 - 21.1.12. "the Indemnified Persons" has the meaning given to it in clause 14;
 - 21.1.13. "Location of Goods" has the meaning given to it in clause 10.8;
 - 21.1.14. "PPSA" means the *Personal Property Securities Act 2009 (Cth)*;
 - 21.1.15. "Proposed Sale Price" has the meaning given to it in clause 10.2;
 - 21.1.16. "Retained Goods" has the meaning given to it in clause 10.2;
 - 21.1.17. "services" means any service which may be provided, directly or indirectly, to the Customer by Chevron Glass Pty Ltd under this Agreement; and

- 21.1.18. "Specification" means any design, schematic or piece of artwork, particulars of weights or dimensions for goods relating to the goods and/or services referred to in the quotation which have been supplied by the Customer to be used by Chevron Glass Pty Ltd in the course of providing the services;
- 21.1.19. "sub-Purchaser" has the meaning given to it in clause 10.2.
- 21.2. Consummation: This Agreement is written in plain English as far as possible. Its terms are to be interpreted so as to give efficacy to the parties' agreement; no rule resolving a doubt as to interpretation against the party preparing this Agreement will apply.
- 21.3. Parties: This Agreement binds the parties' respective heirs, successors, legal personal representatives and assigns; where a party comprises more than one person, this Agreement applies to all of them together and each of them separately.
- 21.4. Amendments: Any amendment to a term of this Agreement other than a variation under clause 3 must be made in writing and executed by the parties or duly authorised officers on behalf of the parties.
- 21.5. Force Majeure: Except for an obligation to pay money, neither party will be liable for any failure or delay in performance of its obligations resulting from circumstances beyond the reasonable control of such party. If a force majeure event occurs, the party suffering it will notify the other party and expected duration of that event. The party suffering the force majeure event must use all reasonable endeavours to obviate that force majeure event.
- 21.6. Notice: Any notice given or invoice provided pursuant to this Agreement must be in writing and be hand delivered or sent by prepaid post or by facsimile or electronic mail address (as the case may be) shown at the commencement of this Agreement (or any other address, facsimile number or electronic mail address that a party may notify to the other) and will be deemed sufficiently given:-
- 21.6.1. in the case of hand delivery, on the date of delivery;
- 21.6.2. in the case of prepaid post, 2 business days after being sent by prepaid post;
- 21.6.3. in the case of facsimile, on receipt by the sender of a successful transmission answer-back; or
- 21.6.4. in the case of electronic mail, on receipt by the sender of electronic confirmation that the electronic mail has been received by the recipient party.
- 21.7. Severability: Every provision of this Agreement will be deemed severable as far as possible from the other provisions of this Agreement.
- 21.8. Governing law: This Agreement is to be construed according to South Australian laws and the parties submit themselves to the jurisdiction of the Courts of South Australia and any competent appellate courts.
- 21.9. Further assurances: The parties will promptly do everything necessary or desirable, even if not expressly stated in this Agreement, to ensure that the terms of this Agreement are fully carried into effect.
- 21.10. Waiver: The failure by Chevron Glass Pty Ltd to insist upon strict performance by the Customer of any of the terms of this Agreement will not be deemed a waiver of any term or of a breach by the Customer. A waiver of any term of this Agreement by Chevron Glass Pty Ltd must be in writing executed by Chevron Glass Pty Ltd or one of its duly authorised officers or lawyers.
- 21.11. Entire agreement: This Agreement contains the entire agreement between the parties in respect of the subject matter of this Agreement. This Agreement supersedes any prior agreement or understanding (if any) between the parties and there is no collateral or other form of agreement between the parties in relation to the subject matter of this Agreement. To the extent permitted by applicable law, implied terms relating to the quality or fitness

for purpose of goods and/or services provided or similar matters are expressly excluded from this Agreement.

- 21.12. Costs: The parties will pay their own costs of the negotiation, preparation and execution of this Agreement. The Customer will pay all costs and losses incurred by Chevron Glass Pty Ltd in consequence of any breach by the Customer of any term of this Agreement (but without prejudice to any other rights or remedies which Chevron Glass Pty Ltd may have as a result of that breach). Reasonable debt collection costs incurred by Chevron Glass Pty Ltd will be payable by the Customer. The Customer will pay Chevron Glass Pty Ltd's legal costs on a full indemnity basis to the extent that those costs are reasonably incurred.
- 21.13. Privacy Act: In consideration of Chevron Glass Pty Ltd providing credit facilities to the Customer, the Customer hereby agrees that for the purposes of processing credit applications, Chevron Glass Pty Ltd may make whatever enquiries it deems necessary from any source of information including credit reporting agencies and credit providers. The Customer acknowledges that Chevron Glass Pty Ltd may need to supply information about the Customer to those sources and the Customer gives its authorisation to Chevron Glass Pty Ltd to do so.