



**CHEVRON GLASS PTY LTD**  
ABN 84 008 038 177  
5 Brandwood Street, ROYAL PARK SA 5014  
PHONE: (08) 8447 6444  
WEB: [www.chevronglass.com.au](http://www.chevronglass.com.au)

## TERMS & CONDITIONS

These are the standard terms and conditions of sale for Chevron Glass Pty Ltd ("**Chevron Glass**") and apply to any and all supply of goods and or services by Chevron Glass to any persons including bodies corporate ("**Customer**").

## OVERVIEW

### Commencement

Chevron Glass 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. When the parties first agree that Chevron Glass 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 and the Customer consists of the following terms and conditions, the contract price given by Chevron Glass 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.

### Breach of this Agreement

If a party is in breach of this Agreement prior to a variation in the Agreement, 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 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. General Provisions and Interpretation

- 1.1. Interpretation: Unless qualified by or inconsistent with the context:
  - 1.1.1. a reference to one gender includes both genders;
  - 1.1.2. reference to a person includes an incorporated body or other association of persons or a governmental agency and vice versa;
  - 1.1.3. the singular includes the plural and vice versa;
  - 1.1.4. headings are for convenience of reference only and will not affect the interpretation of this Agreement;
  - 1.1.5. "**Agreement**" means the agreement between the parties with terms defined by the documents referred to in clause 3 herein including any variations in accordance with clause 4 herein or otherwise;
  - 1.1.6. "**Australian Consumer Law**" means Schedule 2 of the *Competition and Consumer Act 2010* (Cth);
  - 1.1.7. "**Customer**" means any persons including bodies corporate supplied goods or services by Chevron Glass in accordance with this Agreement;
  - 1.1.8. "**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;
  - 1.1.9. "**Force Majeure**" means an act of God or any act of war, natural disaster, strike, boycott, embargo, shortage, riot, lockout, labour dispute, or civil commotion.
  - 1.1.10. "**goods**" means all goods of whatsoever description;
  - 1.1.11. "**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;
  - 1.1.12. "**the Indemnified Persons**" has the meaning given to it in clause 15;

- 1.1.13. “**PPSA**” means the *Personal Property Securities Act 2009* (Cth);
- 1.1.14. “**PPSR**” means the Personal Property Securities Register and refers to the database containing all registrations on personal property made pursuant to the PPSA;
- 1.1.15. “**services**” means any service which may be provided, directly or indirectly, to the Customer by Chevron Glass under this Agreement; and
- 1.1.16. “**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 in the course of providing the services.

## 2. 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 are accurate. This warranty is given each time Chevron Glass accepts an order from the Customer or otherwise agrees to supply goods and/or services to the Customer.

## 3. Initial Order establishes this Agreement

When Chevron Glass 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 enter into this Agreement which is comprised of the following:

- 3.1. These terms and conditions;
- 3.2. Any written warranty offered by Chevron Glass in relation to the particular goods and/or services ordered by the Customer;
- 3.3. If there is a written quotation or price given by Chevron Glass which has been accepted by the Customer, that written quotation and, if the quotation refers to a Specification, that Specification;
- 3.4. If Chevron Glass 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 has indicated that

its standard prices will apply to the supply, that written standard price; and

- 3.5. 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 3 prevents the parties to this Agreement reaching agreement upon the prices that will apply as between themselves.

## 4. Subsequent Orders vary this Agreement

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

- 4.1. There is an additional obligation on Chevron Glass to supply the goods and/or services described in the order in accordance with the existing terms of this Agreement;
- 4.2. There is an additional obligation on the Customer to make payment to Chevron Glass of the amount specified in the order in accordance with the existing terms of this Agreement;
- 4.3. Existing obligations of the parties remain in force, including any obligations of which either party is in breach; and
- 4.4. 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 4, 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.

## 5. Specifications supplied by Customer

- 5.1. In the event that a Specification is to be supplied by the Customer:
  - 5.1.1. The Customer shall supply the Specification prior to Chevron Glass providing a quotation;
  - 5.1.2. All Specifications submitted to Chevron Glass are approximate only and any

deviation from any of them does not vitiate any contract with Chevron Glass or form grounds for any claim against Chevron Glass provided that such deviations do not render the goods unsuitable for their normal or specified purpose;

- 5.1.3. Chevron Glass 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 may agree; and
- 5.1.4. The Customer acknowledges that Chevron Glass shall not be responsible for errors in Specifications or proofs provided by the Customer.

## **6. The Contract Price**

Chevron Glass will render invoices to the Customer for the agreed price of the goods and/or services supplied or to be supplied by Chevron Glass 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's statement of invoices. The parties may change the amount or manner of payment by written agreement from time to time.

## **7. Delivery**

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

## **8. GST**

The Customer must pay to Chevron Glass any GST payable in respect of taxable supplies made by Chevron Glass to the Customer.

## **9. Cessation of Supply**

In the event that the Customer defaults in the payment of any monies due under this Agreement then Chevron Glass may refuse delivery of any of the goods remaining to be delivered and/or all monies due to Chevron Glass shall immediately become due and payable.

## **10. Interest on Outstanding Payments**

Chevron Glass 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 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 receives payment at a rate of interest of nine per cent (9%) per annum in the absence of written notice to the contrary given by Chevron Glass to the Customer.

## **11. Reservation of Title**

Chevron Glass retains all legal ownership of the goods until it receives payment from the Customer in full.

- 11.1. Goods in the possession or control of the Customer answering the description of goods that have been supplied in the past by Chevron Glass 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.

## **12. Guarantees, Liens and Charges**

- 12.1. Chevron Glass shall be entitled at any stage and during the continuance of this Agreement to request such security or additional security as Chevron Glass 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 is only entitled to reasonable security but there is a rebuttable presumption that any security requested by Chevron Glass is reasonable.

- 12.2. The Customer agrees, permits and authorizes Chevron Glass 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.
- 12.3. Chevron Glass's rights under clauses 1.1 and 12.2 remain in force following the termination of this Agreement until such time as all amounts outstanding under this Agreement are paid by the Customer.

### **13. Personal Property Securities Act**

- 13.1. In the event that the PPSA applies to a grant of security under this Agreement including any retention of title under clause 11 herein:
  - 13.1.1. In the event that any thing is used as collateral for a security interest held by Chevron Glass 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.
  - 13.1.2. If the Customer grants Chevron Glass a security interest in collateral which is predominantly used for personal, domestic or household use the Customer must give written notice to Chevron Glass 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 that the collateral is not predominantly used for personal, domestic or household use.
  - 13.1.3. The Customer will do all things reasonably required of the Customer by Chevron Glass to allow Chevron Glass to register its security interest on the PPSR under the provisions of the PPSA.

- 13.1.4. The Customer will reimburse Chevron Glass for maintenance fees payable by Chevron Glass under s168 of the PPSA or as incurred for fees payable in relation to the PPSR.

### **14. Intellectual Property**

- 14.1. 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, unless such was provided by the Customer under clause 5 of this Agreement.
- 14.2. 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.
- 14.3. The Customer agrees to indemnify Chevron Glass 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.

### **15. Indemnity**

The Customer will hold Chevron Glass and its workers, contractors and agents (members of these classes of persons being **"the Indemnified Persons"**) forever harmless and fully indemnified against all actions, demands, costs, claims and losses howsoever arising from the use of the goods by the Chevron Glass' workers, contractors and agents.

### **16. Warranty**

- 16.1. Chevron Glass warrants that goods will be free from defect due to faulty materials or Chevron Glass'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's liability in respect of this warranty is limited to repair or replacement (at Chevron Glass'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. Chevron Glass 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 elects to replace those goods.
- 16.3. Unless Chevron Glass otherwise expressly agrees in writing, the warranty described in clause 16.1 is the only warranty given by Chevron Glass 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

- 17.1. Without limiting any of the provisions in this Agreement which exclude or limit Chevron Glass's liability, Chevron Glass 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.
- 17.2. In the event that the Australian Consumer Law applies Chevron Glass acknowledges the following applies in addition to the Customer's rights under Australian Consumer Law: 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'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 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 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, which consent may be withheld at Chevron Glass'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 has, Chevron Glass 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 under this Agreement are more than 10 business days overdue (whether or not Chevron Glass 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;
- or

- 20.1.5. the Customer breaches any of the terms of this Agreement and within 7 days of receiving a notice from Chevron Glass specifying the breach, has not remedied it.
- 20.2. The Customer may terminate this Agreement:
- 20.2.1. if Chevron Glass 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, the Customer may give Chevron Glass 7 days written notice that it does not intend to purchase any more goods and/or services from Chevron Glass 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 under this Agreement.

#### **21. Application of Terms**

No terms of this Agreement will be written down in favour of a party.

#### **22. 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.

#### **23. Amendments**

Any amendment to a term of this Agreement other than a variation under clause 4 must be made in writing and executed by the parties or duly authorised officers on behalf of the parties.

#### **24. Force Majeure**

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.

#### **25. 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:-

- in the case of hand delivery, on the date of delivery;
- 25.1. in the case of prepaid post, 2 business days after being sent by prepaid post;
- 25.2. in the case of facsimile, on receipt by the sender of a successful transmission answer-back; or
- 25.3. 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.

#### **26. Severability**

If any provision of this Agreement is held to be void, illegal or unenforceable, that provision will be severed from this Agreement and the remaining provisions of this Agreement will continue to be binding on the parties. Every provision of this Agreement will, to the extent required, be read so as to comply with any relevant laws.

#### **27. 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.

#### **28. 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.

#### **29. Privacy Act**

In consideration of Chevron Glass providing credit facilities to the Customer, the Customer hereby agrees that for the purposes of processing credit applications, Chevron Glass 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 may need to supply information about the Customer to those sources and the Customer gives its authorisation to Chevron Glass to do so.

### **30. Waiver**

The failure by Chevron Glass 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 must be in writing executed by Chevron Glass or one of its duly authorised officers or lawyers.

### **31. Costs**

- 31.1. The parties will pay their own costs of the negotiation, preparation and execution of this Agreement.
- 31.2. The Customer will pay all costs and losses incurred by Chevron Glass 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 may have as a result of that breach).
- 31.3. Chevron Glass will not be liable for and the Customer will indemnify Chevron Glass against any costs, claims, damages or losses expended or suffered by Chevron Glass in recovering any outstanding payment due from the Customer including the cost of repossession and re-sale of any goods. Without limiting the scope of this indemnity, the Customer indemnifies Chevron Glass against any claims in relation to damage to goods or property arising from the recovery, detachment or removal of any goods.
- 31.4. Reasonable debt collection costs incurred by Chevron Glass will be payable by the Customer. The Customer will pay Chevron Glass's legal costs on a full indemnity basis to the extent that those costs are reasonably incurred.

### **32. 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.