

## TERMS AND CONDITIONS OF SALE

These are the entire Terms and Conditions of Sale of all goods, merchandise and services (**Goods**) supplied by Majestic Windows to any person, firm or company placing an order with Majestic Windows for the purchase of any Goods (**Customer**). Except as otherwise expressly agreed upon in writing between a duly authorised officer of Majestic Windows and the Customer, these Terms and Conditions shall apply notwithstanding any provisions to the contrary which may appear on any order form or other document issued by any Customer, or any other contract executed by the Customer and Majestic Windows. Any supply of Goods by Majestic Windows 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 Majestic Windows in respect of any such supply does not give rise to a new or separate Agreement.

## DEFINITIONS AND INTERPRETATION

---

- 1.1 "Business Day" means a day that is not a Saturday, Sunday or any other day which is a public holiday or a bank holiday in the place where an act is to be performed or a payment is to be made.
- 1.2 "Customer" means any person, firm or company placing an order with Majestic Windows for the purchase of any Goods and to whom the Quotation is addressed and/or any person who accepts the Quotation.
- 1.3 "Contract" means the contract for the sale of the Goods and the supply of the Services specified in the Order and subject to these terms and conditions of sale.
- 1.4 "Courts" means, in relation to a Jurisdiction, those courts and tribunals exercising jurisdiction in that Jurisdiction, including any competent Federal court exercising jurisdiction in that Jurisdiction. 1.5 "Domestic Building Acts" means:
- 1.5.1 the Home Building Act 1989 (NSW);
  - 1.5.2 the Domestic Building Contracts Act 2000 (Qld);
  - 1.5.3 the Domestic Building Contracts Act 1995 (Vic); and
  - 1.5.4 the Home Building Contracts Act 1991 (WA);
  - 1.5.5 the Building Work Contractors Act 1995 (SA);
  - 1.5.6 the Building Act 2016 (TAS);
  - 1.5.7 the Building Act 2004 (ACT);
  - 1.5.8 the Building Act (NT);
- As amended from time to time, and includes any other laws or regulations which imply certain warranties into the contract between Majestic Windows and the Customer.
- 1.6 "Glass" means Goods made out of glass and the components of glass within a Majestic Windows Good, including glass components of windows and doors. This definition of Glass does not include IGU or THS, which have their own separate meaning.
- 1.7 "Goods" means the Goods, merchandise, and services the subject of the Quotation. 1.8
- "IGU" means insulated glass units.
- 1.10 "Order" means the acceptance of the Quotation in whole or in part by the Customer.
- 1.11 "Person" includes companies.
- 1.12 "Quotation" means the document issued by Majestic Windows outlining its estimate of the cost for the provision of specified Goods and Services.
- 1.13 "Services" means the Services, if any, to be supplied with the Goods and the subject of the Quotation.
- 1.15 Headings are for convenience only and do not form part of these terms and conditions of sale.

## PLACING ORDER

---

- 2.1 Any person who accepts the Quotation warrants he is the duly authorised agent of the Customer for the purpose of placing the Order. An Order is deemed to have been accepted by the Customer upon the signing of the Quotation and/or payment of a deposit. By accepting the Order the Customer is deemed to have read and understood the Majestic Windows terms and conditions of sale.
- 2.2 No quotation by Majestic Windows shall constitute an offer.
- 2.3 Majestic Windows reserves the right to accept a part order by notifying the Customer in writing or by delivering the Goods to the Customer.

2.4 The Customer acknowledges that Majestic Windows has no obligation to agree to provide, or continue to provide any credit facilities to the Customer. The Customer is not entitled to any credit facilities until it receives notice from Majestic Windows to that effect and, may at any time by notice to the Customer reduce, vary or terminate any such credit facilities. Any credit limit that may apply from time to time in respect of credit facilities is for the administrative convenience and solely for the benefit of Majestic Windows and such credit limit does not constitute a term of this agreement nor of any Deed of Guarantee, Indemnity and Charge in respect of the obligations of the Customer.

2.4.1 should Majestic Windows exercise its rights under clause 2.4 to reduce, vary or terminate any such credit facilities Majestic Windows may refuse to deliver further Goods to the Customer unless such Goods are paid by the Customer in cash before delivery.

2.5 The Customer must check all details of the Goods in the Quotation and/or Order form in relation to quantities, description, sizes, dimensions, colour, glass (if not clear float) and accessories. Unless otherwise represented by Majestic Windows, to the extent permitted by law, will not be liable for any incorrect details of the Goods in relation to quantities, description, sizes, dimensions, colour, glass (if not clear float ) and accessories.

## **TERMS OF PAYMENT**

---

3.1 Unless Majestic Windows otherwise determines, payment terms are thirty (30) days from end of month of delivery and any deviation from these terms must be agreed to in writing between Majestic Windows and the Customer. In situations where payment terms are not provided to a Customer and subject always to any restrictions imposed by the Domestic Building Acts, the Customer must make payment in full at the time of placing the Order.

3.2 Unless otherwise agreed in writing by Majestic Windows, all invoices and statements will be issued by email, to the email address nominated by the Customer. If the Customer requests that the invoices and statements are to be sent to it by post, in hardcopy paper form, Majestic Windows reserves the right to charge the Customer a paper account fee per month. It is agreed between the parties that this fee is agreed as the liquidated cost of issuing a paper invoice. The fee is payable simultaneously with the account invoice to which it relates to.

3.3 The Customer is not entitled to defer, offset or withhold payment in whole or in part for any reason unless agreed to by Majestic Windows in writing. Customers who have overdue accounts are precluded from participating in any special deals, discounts, bonus payment redemptions, rebates and all other incentive programs until their accounts are paid up to date.

3.4 If at any time monies are overdue or any trading account the Customer maintains with Majestic Windows is in arrears, then at the option of Majestic Windows (but subject always to any restrictions imposed by the Domestic Building Acts) the whole account balance shall become immediately due and owing by the Customer.

3.5 Majestic Windows may, at its absolute discretion, charge interest on all overdue accounts at the published monthly Reserve Bank of Australia cash rate plus two (2) percent per month calculated and payable daily, compounded from the due date until the invoice is paid in full.

3.6 Majestic Windows will charge a reasonable administration fee for any payment made by credit card and the amount to be charged will be advised to the customer at the time of placing the order. If Majestic Windows is required to deviate from the Quotation in order to fulfil the Order, Majestic Windows may, in its absolute discretion, charge the Customer to the fullest extent permitted by law for any additional costs incurred by Majestic Windows in so doing. A certificate signed by an authorised representative of Majestic Windows shall be prima facie evidence of the amount of indebtedness of the Customer to Majestic Windows at that time.

3.7 The Customer is liable to pay to Majestic Windows and Majestic Windows may recover in full from the Customer all costs, expenses and disbursements incurred and / or payable by Majestic Windows (including debt collection agency fees and legal costs on a solicitor/client basis) arising from or as a result of Majestic Windows exercising or enforcing or seeking to exercise or enforce a right under these Terms and Conditions or the accompanying Deed of Guarantee, Indemnity and Charge, and in particular, in collecting or attempting to collect amounts due to Majestic Windows. Such costs, expenses and disbursements may be recovered by Majestic Windows from the Customer as a liquidated debt. Majestic Windows may apply payments received from the Customer firstly to any costs, expenses and disbursements, then to interest and then to other amounts owed by the Customer.

3.8 Where Majestic Windows, in its absolute discretion, determines that any one or more inter-related accounts is non-compliant with the Terms of Payment under clause 3 of these Terms and Conditions then Majestic Windows may elect to suspend the supply of Goods and/or cancel any or all inter-related accounts whereby invoices rendered to all inter-related accounts shall become immediately due and payable to Majestic Windows.

## **ABILITY TO SUPPLY**

---

4.1 Any obligation of Majestic Windows to supply Goods or Services is subject to its ability to secure labour, materials and other Services for the manufacture and supply of the Goods and Services.

4.2 Majestic Windows shall not be liable in any way for failure to deliver the Goods and/or supply the Services within the stated time and the Customer may not reject the Goods and/or Services nor will they be relieved from any obligation to pay for the Goods on account of such failure to deliver within the stated time.

4.3 Majestic Windows shall not be liable for any failure to supply or deliver the Goods or Services due to strikes, fires, explosions, flood, riot, lock-out, injunction, and interruption of transportation, accidents, war, governmental action or other circumstances beyond Majestic Windows control.

- 4.4 If for any reason Majestic Windows is unable to perform its obligations under the Contract, then Majestic Windows may at any time by notice in writing to the Customer terminate the Contract whereupon the Contract will be at an end and any deposit money paid by the Customer will be refunded by Majestic Windows and save for the recovery of the deposit neither party will have any claim against the other.

## PRICES

---

- 5.1 Except for sub-clause 5.2, the prices on the Quotation shall remain current for thirty (30) days. Majestic Windows reserves the right to vary the prices after lapse of thirty (30) days to the extent permitted by law.
- 5.2 Quotations given for site glazing will remain valid for a period of three (3) months from date of completed manufacture of the Goods. Majestic Windows reserves the right to vary the charge after the lapse of three (3) months, to the extent permitted by law.
- 5.3 The quoted price is based upon the particular specifications of the Goods current at the time of Quotation. Majestic Windows reserves the right, to the extent permitted by law, to vary the price and the Customer agrees to pay such varied price if:
- 5.3.1 there is any variation in specification after the Order is placed; or
  - 5.3.2 additional costs are incurred by Majestic Windows from the imposition of a special site allowance, or allowances applying to a project of which Majestic Windows was not advised of in writing before the date of the Quotation or where special site allowances that apply to a project have not been allowed for. Such additional costs relating to new or additional site allowances must be paid for by the Customer to Majestic windows as amounts payable in addition to the sum stated in the Agreement; 5.3.3 the invoice price or contract price is varied as a consequence of currency fluctuations, taxes, customs duty or other imposts. Notwithstanding any other clause of these terms and conditions of sale, if any supply by Majestic windows is subject to Goods and Services Tax (GST), the Customer must, unless the price on the Quotation expressly states that GST is included, pay an additional amount to Majestic Windows. The additional amount:
  - 5.3.4 is equal to the price payable by the Customer for the relevant supply multiplied by the prevailing GST rate; and
  - 5.3.5 is payable at the same time and in the same manner as the price for the supply to which the additional amount relates.
- 5.4 The Customer must pay to Majestic Windows all charges, duties, imposts, taxes (including any goods and services taxes and sales taxes) and similar amounts payable in relation to the sale or supply of any Goods or services by Majestic Windows to the Customer.
- 5.5 The Customer is not entitled to make any claim upon Majestic Windows if any amounts are outstanding from the Customer to Majestic Windows. The Customer is not entitled to set off any amounts against any amounts owed by the Customer to Majestic Windows unless specifically agreed to by Majestic Windows in writing. Majestic Windows may at any time set off amounts owed by Majestic Windows to the Customer against any sums owed by the Customer to Majestic Windows.

## DELIVERY

---

- 6.1 The Customer authorises Majestic Windows to deliver Goods to the place nominated by the Customer and to leave the Goods at such place whether or not any person is present to accept delivery. Majestic Windows shall not be liable on any basis whatsoever for loss suffered by the Customer after delivery to the Customer's nominated delivery address.
- 6.2 Majestic Windows reserves the right to charge the Customer packing, crating and delivery charges in accordance with Majestic Windows current rates as at the date of dispatch. If there is no current rate, then a reasonable delivery charge shall apply.
- 6.3 Delivery of the Goods shall be deemed to occur when they are handed to the Customer or his representative or are delivered to the premises or site or carrier nominated by the Customer and the Goods shall thereafter be at the Customer's risk.
- 6.4 Upon the signing of a delivery docket unless the contrary is noted in that docket, the Goods shall be deemed to have been delivered in good order and condition and if no person is present to sign the delivery docket then the Goods will be deemed to have been delivered in good order and condition.
- 6.5 To the extent permitted by law, the Customer may only return Goods if a shortage, damage or other fault at the time of delivery is reported by the Customer to Majestic Windows within twenty four (24) hours of delivery and confirmed in writing within seven (7) days of such report. Any goods that have been modified at the request of the

Customer will not be accepted for return. Majestic Windows reserves the right at its absolute discretion to charge a restocking fee of 15% of the Purchase Price of any Goods returned, which may be deducted from any refund. The Customer agrees that the restocking fee is a genuine pre-estimate of damages and not a penalty. 6.6 The Customer agrees to accept delivery of the Goods or to make alternative delivery arrangements within seven (7) days of Majestic Windows notifying the Customer that the Goods are available for delivery. To the extent permitted by law, Majestic Windows reserves the right at its absolute discretion to charge a minimum fee of \$50 plus two (2) percent of the order value per week or part thereof, if the Customer fails to accept or make alternative arrangements for delivery within seven (7) days of being advised that delivery is ready. The Customer agrees that such fee and percent of order value is a genuine pre-estimate of damages and not a penalty. 6.7 Written advice to the Customer that Goods are ready for delivery whether in whole or in part shall constitute a tender of the Goods and the terms of payment shall apply. Where the parties have agreed that the Customer will advise Majestic Windows of a "load date" (being a date for delivery), the Customer must: 6.7.1 give sufficient notice of the load date (being not less than the standard published lead time for the Goods to be manufactured and delivered); and

6.7.2 ensure that the load date is not more than ninety (90) days after the date of the Order. To the extent permitted by law, the Customer shall be responsible to Majestic Windows for any extra costs (which term shall include actual costs and imputed costs for storage, handling or demurrage) incurred by Majestic Windows as a result of failure of the Customer to take delivery of the Goods at the time and place specified. Majestic Windows will be entitled to a lien over the Goods until such costs have been paid in full.

6.8 If the Customer is required to give Majestic Windows notice of a load date under clause 6.4, and fails to do so within ninety (90) days after placing the Order, Majestic Windows reserves the right to:

6.8.1 review and vary the price payable by the Customer under the Quotation to the extent permitted by law, if Majestic Windows considers it reasonable to increase those prices to reflect Majestic Windows then current prices for such Goods (or equivalent Goods), in which case the Customer must pay the difference on demand; and/or

6.8.2 supply to the Customer equivalent Goods to those described in the Quotation but which may contain slight variations in design. Such variations will not materially affect the dimensions, operation or appearance of the Goods. Majestic Windows must inform the Customer of such variations at the time of delivery of the Goods.

6.9 If the Customer fails to accept any part of the Goods which Majestic Windows has dispatched in conformity with the Contract and such part of the Goods is returned to Majestic Windows and re-dispatched subsequently, then Majestic Windows may, to the extent permitted by law, require the Customer to pay on demand a charge equal to double the current delivery charge.

6.10 It is the Customer's responsibility on delivery to ensure that all Goods conform to its specification and requirements and no claims will be accepted for defects ascertainable on delivery in respect of Goods not conforming to the Customer's written specifications and requirements, unless made in writing within fourteen (14) days after delivery.

6.11 Any claim by the Customer that any Goods or services invoiced by Majestic Windows have not been delivered to or received by the Customer must be communicated in writing by the Customer to Majestic Windows within fourteen (14) days that the Goods or services were invoiced, failing which the Customer will be deemed to have received delivery of the Goods or services.

## TITLE

---

7.1 Goods are at the Customer's risk from delivery and property in the Goods supplied by Majestic Windows to the Customer will not pass to the Customer until the money owing for those Goods and any other money owing by the Customer to Majestic Windows has been paid. The Customer in the meantime takes custody of the Goods as the fiduciary agent and bailee of Majestic Windows.

7.2 Where the Customer does not make payment in respect of specific Goods, payment must be treated as having been made first in respect of Goods which have passed out of the possession of the Customer, and then in respect of whatever Goods still in the possession of the Customer Majestic Windows elects.

7.3 Until the Goods have been paid for in full:

7.3.1 the Customer must store the Goods in such a manner as to show clearly that they are the property of Majestic Windows. The Customer acknowledges that if it should mix the Goods with other products or items such that the Goods are no longer separately identifiable then the Customer and Majestic Windows will be owners in common of the new product;

7.3.2 the Customer may sell the Goods, in the ordinary course of its business, but only as fiduciary agent of Majestic Windows. Any right to bind Majestic Windows to any liability to a third party by contract or otherwise is expressly negated. The Customer receives all proceeds, whether tangible or intangible, direct or indirect, of any dealing with the Goods (including any proceeds from insurance claims) in trust for Majestic Windows and must keep the proceeds in a separate bank account until the liability to Majestic Windows is discharged. 7.3.3 the Customer must keep all Goods insured against theft, damage, and destruction (and if the Customer fails to insure the Goods, Majestic Windows may do so and invoice the Customer for the cost of insurance); and the Customer agrees not to sell, assign, charge or otherwise encumber or grant any interest over any obligations which any third party may owe to the Customer as a result of the use, manufacture or resale of the Goods.

7.3.4 The Customer irrevocably authorises Majestic Windows at any time, to enter any premises:

7.3.5 upon which the Goods are stored to enable Majestic Windows to:

7.3.6 inspect the Goods; and/or

7.3.7 if the Customer has breached these terms and conditions, reclaim possession of the Goods,

7.3.8 upon which the Customer's records pertaining to the Goods are held to inspect and copy such records.

7.4 The provisions of this clause apply notwithstanding any arrangement between the parties under which Majestic Windows or a related body corporate grants the Customer credit. 7.5 The right to on-sell, deal or otherwise dispose of the goods in the normal course of trade may be revoked at any time by Majestic Windows and shall automatically cease if the Customer does not pay Majestic Windows, the Customer is unable to pay its debts as they fall due, the Customer ceases or suspends the Conduct of its business or threatens to, execution is levied on any of the Customer's assets, a Receiver is appointed over any of the assets on the undertaking of the Customer or if a winding up order is made against the Customer or if the Customer goes into voluntary liquidation (otherwise than for the purpose of reconstruction or amalgamation) or administration or calls a meeting of, or makes any arrangement or composition with, creditors or commits any act of bankruptcy, or where the Customer is in default of any of its obligations to Majestic Windows, and all amounts immediately become due and payable.

## WARRANTY AND GUARANTEES

---

8.1 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 for 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.

8.2 Where you are not a "consumer" within the meaning of the Australian Consumer Law, the guarantees referred to in sub-clause 8.1 do not apply.

In addition to any rights or remedies that you may have under the Australian Consumer Law or any other law, and subject to subclauses 8.3 and 8.4, Majestic Windows warrants that if, the Goods prove defective by reason of faulty workmanship and/or materials or any service is not rendered with due care and skill, in the case of Goods from the date the Goods are delivered or in the case of Services the date the Services are completed within the warranty period outlined in the Majestic Windows Standard Warranty (Warranty Period). Majestic Windows will repair or replace the Goods or Services without charge.

8.3 The warranty in sub-clause 8.2 does not apply and to the extent permitted by law Majestic Windows will not be liable:

8.3.1 if the Goods have not been properly handled, installed, maintained and operated in accordance with Majestic Windows standard specifications and recommendations;

8.3.2 if payment has not been received in full for the Goods;

8.3.3 in respect of any fault or failure arising from misuse, damage or neglect to the Goods by the Customer.

8.3.4 where the Goods include doors: 8.3.4.1 if the door(s) are not sealed within one month from the date of delivery with two coats of paint or varnish to both faces and all edges, including top and bottom and are hung in the correct manner;

- 8.4 Majestic Windows will not be responsible under clause 8.3 for additional charges of hanging, painting or other charges arising from the replacement of doors (including wardrobe doors) or for installation, removal, labour or other costs arising from the replacement of any Glass Goods.
- 8.5 In order to claim under the warranty in sub-clause 8.2 you must:
- 8.5.1 Within thirty (30) days of any defect arising, notify Majestic Windows of the defect in writing (Notification);
  - 8.5.2 Contact the Majestic Windows supplier within the Warranty Period; and
  - 8.6 The Notification must include:
    - 8.6.1 your full name, address and telephone number;
    - 8.6.2 your original proof of purchase of the item(s) the subject of the defect or Claim;
    - 8.6.3 a written description of the defect;
    - 8.6.4 where possible, a photograph of the defect; and
    - 8.6.5 a written assurance that the Goods have not been damaged, incorrectly assembled, installed or operated, negligently treated or misused.
- 8.7 The Notification must be made to:
- 8.7.1 the Majestic Windows supplier who supplied the Goods/Services to you; or
  - 8.7.2 2/86 Wedge St, Epping, Victoria, T (03) 9408 5200; or
  - 8.7.3 an enquiry through our website(s) at [www.majesticwindows.com.au/contactus](http://www.majesticwindows.com.au/contactus)
  - 8.7.4 This warranty does not include the cost of transportation to or from Majestic Windows.

## LIABILITY

---

- 9.1 Subject to clause 8, the only conditions, guarantees and warranties which are binding on Majestic Windows in respect of the state, quality or condition of the Goods and/or the Services (including advisory Services) are those imposed and required to be binding by statute (including the Australian Consumer Law and, if applicable, the Domestic Building Acts) and which cannot be excluded. To the extent permitted by law, the liability, if any, of Majestic Windows arising from the breach of such conditions, guarantees or warranties shall, at Majestic Windows option, be limited to and completely discharged in the case of the Goods, either the replacement or the repair by Majestic Windows of the Goods and in the case of the Services, by the supplying of the Services again. The Customer must bear the costs of returning to Majestic Windows any Goods in respect of which a warranty claim is made. All other conditions, guarantees and warranties whether express or implied by law in respect of the state, quality or condition of the Goods and/or the Services which may apart from this clause be binding on Majestic Windows are hereby expressly excluded to the fullest extent permitted by law and subject to clause 8.1, majestic Windows has no liability to any person for any loss or damage of any kind whatsoever including without limitation, for any indirect or consequential loss (including loss of profits, business, revenue, opportunity, goodwill, or loss arising from any failure, breakdown, defect or deficiency in the Goods and/or the Services) arising out of or in connection with the Goods and/or the provision of the Services.

## CANCELLATION AND DEFAULT

---

- 10.1 The Contract may be cancelled/varied by the Customer only with the written consent of Majestic Windows. To the extent permitted by law, Majestic Windows may require as a condition of its consent that the Customer pay reasonable charges for such cancellation/variation, which take into account expenses incurred by Majestic Windows to the date of cancellation/variation, including recompense for any commitments made by Majestic Windows in consequence of the Order and all other losses both actual and prospective, incurred as a result of such cancellation/variation.

10.2 Majestic Windows shall be entitled to suspend delivery of the Goods and / or services or any part thereof and/or terminate the Contract if the Customer either fails to perform or observe any condition of the Contract including the terms of payment and/or delivery arrangements or if the Customer is made bankrupt, has a liquidator, receiver or official manager appointed for all or any part of his assets, or has a winding up order made against him or enters into any contract with creditors or voluntary insolvency administration. Such suspension and/or termination shall be without prejudice to and shall not affect any rights of Majestic Windows against the Customer prior thereto.

10.3 Upon termination of the Contract by Majestic Windows the deposit (if any) shall be forfeited to Majestic Windows which may either sue the Customer for breach of Contract or resell the Goods and any deficiency arising on such resale and all expenses of and incidental to such resale or attempted resale and the Customer's default shall be recoverable by Majestic Windows from the Customer as liquidated damages. Majestic Windows may retain any monies paid by the Customer on account of the Contract other than the security deposit forfeited, as security for any damages awarded to Majestic Windows for the Customer's default.

## PRIVACY

---

11.1 The Customer acknowledges that Majestic Windows may collect personal and credit information in connection with Majestic Windows dealings with the Customer or any Guarantor in accordance with Majestic Windows Privacy Statement, Privacy Policy, Credit Reporting Policy and Statement of Notifiable Matters pursuant to the Credit Reporting Code, the Privacy Act 1988 (Cth), the Privacy (Enhancing Privacy Protections) Act 2012, and the Australian Privacy Principles, and the Customer consents to that information being collected. A copy of Majestic Windows Privacy Statement, Privacy Policy, Credit Reporting Policy and Statement of Notifiable Matters will be provided to the Customer upon request in writing.

## NOTICES

---

12.1 A statement in writing signed by Majestic Windows duly authorised officer ("Notice") stating all or any of the following matters, facts or things:

- (a) the amount due at any date for good(s) supplied to the Customer;
- (b) the amount due at any date for interest on the monies due;
- (c) the amount due at any time for legal costs actually incurred by the Company including costs of and incidental to any litigation, stamp duties and other expenses payable on these terms and conditions, or any credit application, guarantee or other security documents signed by the Customer together with any collection costs or dishonoured cheque fees;
- (d) the date of making the default in performing or observing any terms and conditions, covenant or agreement to be performed or observed by the Customer;
- (e) whether such default has continued between specified dates;

Such Notice Shall be conclusive and prima facie evidence of the Customer's indebtedness to Majestic Windows and any such matter(s), fact(s), or thing(s) stated in the Notice. 12.2 A Notice or other communication connected with these terms and conditions ("Notice") has no legal effect unless it is in writing. In addition to any other method of service provided by law, the Notice may be sent by prepaid post to the address of the addressee set out in the Contract or subsequently notified; sent by facsimile to the facsimile number of the addressee; sent by email to the email address of the addressee; or delivered at the address of the addressee set out in the Contract or subsequently notified.

12.3 If the Notice is sent or delivered in a manner provided by clause 12.2, it must be treated as given to and received by the party to which it is addressed:

- 12.3.1 if sent by post, on the 2<sup>nd</sup> Business Day (at the address to which it is posted) after posting;
- 12.3.2 if sent by facsimile or email before 5pm on a Business Day at the place of receipt, on the day it is sent and otherwise on the next Business Day at the place of receipt; or
- 12.3.3 if otherwise delivered before 5pm on a Business Day at the place of delivery, upon delivery, and otherwise on the next Business Day at the place of delivery.

12.4 Despite sub-clause 12.3.2: 12.4.1 a facsimile is not treated as given or received unless at the end of the transmission the sender's facsimile machine issues a report confirming the transmission of the number of pages in the Notice.

12.4.2 an email message is not treated as given or received if the sender's computer reports that the message has not been delivered; and 12.4.3 a facsimile or email message is not treated as given or received if it is not received in full and in legible form and the addressee notifies the sender of that fact within 3 hours after the transmission ends or by 12 noon on the Business Day on which it would otherwise be treated as given and received, whichever is later.

## **PERSONAL PROPERTY SECURITIES ACT 2009 ("PPS ACT") (PURCHASE MONEY SECURITY INTEREST ("PMSI") AND ALL PRESENT AND AFTER ACQUIRED PROPERTY ("ALPAAP"))**

---

13.1 Majestic Windows and The Customer hereby acknowledge that these Terms and Conditions of Sale will constitute a 'Security Agreement' for the purposes of the PPS Act. The PPS Act applies to all transactions pursuant to the Terms and Conditions of Sale or otherwise, and that the Goods under these Conditions fall within the PPSA classification of "Other Goods" acquired by the Customer pursuant to these conditions. Only one PPS registration is required for each supply under a continuing contract with a customer

13.2 The Customer hereby grants a charge to Majestic Windows over all and any of their present and after acquired goods and or property ("ALPAAP") as security for all monies, indebtedness and obligations now and in the future owing by the Customer under this Agreement.

13.3 The Customer hereby agrees to do all such things and sign all such documents as are necessary and reasonably required to enable Majestic Windows to acquire a perfected security interest in all goods supplied.

13.4 The Customer hereby agrees to provide such information as is required to enable registration of a Purchase Money Security Interest ("PMSI") under the PPS Act.

13.5 The Customer hereby acknowledges that it will indemnify Majestic Windows for any liability and/or for any costs of registration, maintenance, enforcement or discharge or security interest and such other costs and expenses as Majestic Windows may incur under this Agreement. The Customer hereby agrees that it will not, without notice in writing, change its name, change its structure, status or partnership, or assign or sell its business to another party, or initiate any change to any registered documentation, or act in any manner which would impact on the registered security interest of Majestic Windows. No such event shall affect the liability of the Customer named in any applications for credit, until a new application for credit made in the name of the Customer (applicant and/or the new entity) as restructured or changed is received and approved by Majestic Windows.

13.6 Majestic Windows hereby reserves the right and the Customer agrees that at any time Majestic windows, in its sole discretion, can alter this Agreement, including but not limited to making such amendments, alterations and additions to this Clause and the Terms and Condition as it sees fit, unilaterally by Majestic Windows giving thirty (30) days written notice to the Customer.

13.7 Majestic Windows may allocate amounts received from the Customer in any manner it determines fit, but in default will apply same first to payment of any unsecured amount owing to Majestic windows, next as to any reasonable enforcement expense and then as to any secured balance owing to Majestic Windows.

13.8 The Customer will not (except with Majestic Windows written consent) allow to be, or be liable to become, perfected or attached in favour of any person, a security interest or transitional security interest in any of the monies from time to time payable to Majestic Windows (if any) or otherwise; and whether to a provider of new value or otherwise.

13.9 The Customer will not (as against any person who is a "related entity" of the Customer for the purposes of the Corporations Act 2001) without the prior written consent of Majestic Windows, before or until all monies payable to Majestic Windows in connection with the Agreement is paid in full:

- (a) exercise a right of contribution or indemnity;
- (b) claim the benefit of ( for example, by subrogation ), or seek priority ahead of, the transfer of or the benefit of a security  
Majestic Windows holds in connection with this Agreement;
- (c) try to reduce liability to Majestic Windows through a set off or counterclaim; or
- (d) prove in competition with Majestic Windows if the Customer is unable to pay debts when due.

- (e) seek to perfect or attach in favour of the Customer or another ( either jointly or severally) a security interest in any of the Customer's present or after acquired property which would rank in priority to the entitlements of Majestic Windows 13.10 To the extent permissible at law, the Customer:
    - (a) waives its rights 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 Majestic Windows.
    - (b) agrees to indemnify Majestic Windows 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 or a Financing Change Statement registered by or on behalf of Majestic Windows;
    - (c) agrees they and Majestic Windows contract out of and that nothing in the provisions of Sections 95, 96, 117, 118, 121(4), 130, 132(3)(d), 132(4), 142 and 143 of the PPSA will apply to these Terms Conditions or the Security under these Terms Conditions;
    - (d) agrees to waive its rights under Sections 95, 123, 129, 130, 130(4); 132(3) (d), 135, and 143 of the PPSA:
- 13.11 The Customer hereby consents and appoints majestic Windows to be an interested person and the Customer's authorised representative for the purposes of section 275(9) of the PPSA.
- 13.12 Majestic Windows may assign or transfer this Agreement and/or any security under the PPSA to a related body corporate at any time by written notice to the Customer. The Customer must not assign or transfer the benefit or obligations of this Agreement without the prior written consent of Majestic Windows, which majestic Windows will not unreasonably withhold.
- This PMSI does not lose its priority as a result of the renewal, refinance, consolidation, or restructure of the subject matter of these terms and conditions and any purchase money obligations.
- 13.13 For the purposes of section 20(1) and (2) of the PPSA, and to ensure maximum benefit and protection for Majestic Windows under the PPSA, the Customer consents to grant Majestic Windows, as security for the Customer's indebtedness and obligations, a charge over all of the Customers present and after-acquired property.

## GOVERNING LAW

---

- 14.1 The Customer agrees that these Terms and Conditions of Sale shall be construed according to the laws of the State or Territory as Majestic Windows may in its sole discretion determine. Proceedings by either majestic Windows or the Customer may be instituted and/or continued in the specific Court in such State or Territory as Majestic Windows may in its sole discretion determine. Failing such determination the Customer consents to any proceedings being instituted and heard by any appropriate Court sitting in the State applying the laws of that State.

## MISCELLANEOUS

---

- 15.1 If any condition of a Customer's Order, or any contract executed between the customer and majestic Windows, conflicts with or purports to vary these conditions, then these conditions shall prevail to the extent of any inconsistency or variation unless otherwise agreed upon in writing.
- 15.2 The only terms and conditions binding on Majestic windows are those contained herein or otherwise agreed to in writing by Majestic Windows and those, if any, which are imposed and which cannot be excluded by law.
- 15.3 Unless otherwise stated in the Quotation, all Glass shall be clear Glass.
- 15.4 It is expressly agreed that any variations in colour or texture of any material used in the Goods shall not be a defect.
- 15.5 If scaffolding and/or hoisting facilities are required for the removal of the Goods from the delivery vehicle or for their installation those facilities shall all be the responsibility of and at the cost of the Customer.
- 15.6 If anything in these terms and conditions or the Contract is unenforceable, illegal or void then it is severed and the rest of these terms and conditions and the Contract remain in force.

- 15.7 For the avoidance of doubt, and without limiting the generality of clause 15.7, the price variation provisions in Clauses 5 and 6 do not apply to Contracts for the supply of Services in Victoria.
- 15.8 Majestic Windows shall not be liable for and the Customer shall indemnify and keep Majestic Windows indemnified against, any liability and any loss or damage Majestic windows may sustain as a result of any breach, act or omission, arising directly or indirectly from or in connection with any breach of any Terms and Conditions by the Customer or its representative.
- 15.9 The Customer agrees not to use  
any Goods for: 15.9.1 part of  
any aircraft of whatsoever  
nature; or  
15.9.2 any other unintended 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.
- 15.10 These Terms and Conditions are not to be construed to the disadvantage of the party because that party was responsible for its preparation.
- 15.11 The Customer acknowledges and agrees to charge all of the Customer's interest in real property both (a) present and  
(b) future in order to secure payment of any and all monies which are now or hereafter become due and payable by the Customer to Majestic Windows and consents to the lodgement by Majestic Windows of a Caveat or Caveats noting its interest pursuant to such charge. Immediately on Majestic Windows request the Customer agrees to execute a mortgage in registrable form in Majestic Windows favour over any of the Customer's real property and by reason of this agreement to execute a mortgage in Majestic Windows favour the Customer acknowledges that Majestic Windows is an equitable mortgagee in respect of the Customer's land. If the Customer makes this application as Trustee of any Trust including, without limitation, the Trust (if any) described on the front page of any Application or Commercial Credit then:**
- 15.12 The reference to "real property" in this clause includes any real property of the Trust in addition to the Customer's real property;
- 15.13 The Customer warrants that it:
- (i) is the only Trustee of the Trust; and makes this application for the purposes and benefit of the Trust;
  - (ii) has the power under the Trust to enter into and observe its obligations under this agreement/application; and
  - (iii) has a right to be indemnified out of the assets of the Trust in respect of its obligations under this agreement application.
- 15.14 Majestic Windows may at any time, and from time to time, alter these Terms and Conditions of Sale as it sees fit, unilaterally by Majestic Windows giving thirty (30) days written notice to the Customer. Such altered Terms and Conditions of Sale shall apply from the date of alteration as notified by Majestic Windows. A copy of current Terms and Conditions of Sale can be found on Majestic windows website [www.majesticwindows.com.au](http://www.majesticwindows.com.au) The Customer acknowledges and warrants that he/she/it will regularly inspect the said website for any updated or altered Terms and Conditions.

## **ELECTRONIC COMMUNICATIONS**

---

16.1 In addition to delivery in person, via post and via facsimile, the customer agrees to have invoices and statements sent via email.

16.2 The Customer agrees that email communications from Majestic Windows to the Customer constitute an "electronic communication" within the meaning of the Electronic Transactions Act. The Customer agrees that in agreeing to receive invoices and statements via email, and the service of notices via e-mail under the Act or any like or similar legislation that may be applicable in the State or Territory where the goods were delivered to the Customer, the Customer is in all instances designating "an information for the purposes of receiving electronic communications" within the meaning of the Electronic Transactions Act. 16.3 The Customer agrees that evidence of the "dispatch" (within the meaning of the Electronic Transactions Act) by Majestic Windows of an email is also prima facie evidence of the "receipt" of the email by the Customer within the meaning of the Act. Unless the contrary is proven the time of receipt will be deemed to be twenty (20) seconds after the time of the "dispatch" of the email.

## PRODUCTION SPECIFICATION

---

17.1 It is the Customer's responsibility, in accordance with the relevant Australia Standards, to advise Majestic Windows in writing of:

- (a) the window ratings;
- (b) design window pressures;
- (c) suitable terrain category;
- (d) any design specifications; and
- (e) the relevant building codes and Australian Standards

("Building Specifications") applicable to the installation site for all windows, louvres and doors.

17.2 Should the Customer fail to advise Majestic Windows of the Building Specifications in writing, all Goods produced will be suitable for fully sheltered terrains and will sustain the minimum ratings for wind and water.

17.3 To the extent permitted by law, Majestic Windows will not be liable for the non-compliance and/or faulty performance of any windows, louvres or doors where the customer failed to advise Majestic Windows in writing of the Building Specifications.

17.4 The Customer must inform Majestic Windows on the Order Form as to any specific purposes for which the Goods are to be used.

## INTELLECTUAL PROPERTY

---

18.1 Where Goods are manufactured to the Customer's specification, the Customer will indemnify and keep indemnified Majestic Windows 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 Majestic Windows complying with the Customer's specifications.

18.2 No right or licence is hereby granted to the Customer to use any patent, copyright, registered design, trademark or other industrial property right of Majestic Windows or otherwise.

## TRANSFER

---

19.1 Obligations and rights under these Terms and Conditions cannot be assigned or transferred to any third party without Majestic Windows written consent