

TERMS AND CONDITIONS

1 General

The whole of the Agreement between Axiom Group Investments Pty Ltd ACN 164 133 000 ("Axiom") and the Applicant referred to in the Credit Application or other purchaser of Goods ("Customer") are those set out in these Terms and Conditions as amended from time to time and those, if any, which are implied and which cannot be excluded by law ("Terms"). The *Building and Construction Industry Security of Payment Act 2002 (Vic)* applies to this Agreement. Any other contractual terms of the Customer (whether upon the Customer's order or elsewhere) which are contrary to or inconsistent with these Terms shall not apply nor shall they constitute a counter-offer. By placing an order for the supply of goods, materials and/or parts and/or labour and/or services supplied by Axiom under these Terms ("Goods"), the Customer shall be deemed to have accepted these Terms and to have agreed that they shall apply to the exclusion of all others.

2 Credit Terms

- 2.1 Payment is due on or prior to thirty (30) days from the end of the month of the date of the invoice rendered in respect of the supply of the Goods for Goods supplied on a Credit Account, unless otherwise stated in writing by Axiom. Axiom may charge liquidated damages at a rate equivalent to two per cent (2%) in excess of the rate of interest for the time being fixed under Section 2 of the Penalty Interest Rates Act 1983 if payment is not received by the due date.
- 2.2 Axiom's express or implied approval for extending credit to the Customer must be in writing signed by an authorised representative of Axiom and may be revoked or withdrawn by Axiom at any time.
- 2.3 Any payments received from the Customer on overdue accounts will be applied first to satisfy interest which may have accrued, second to reasonable expenses and legal

costs referred to in Clause 2.4, and then to principal in the following order:

- 2.3.1 First, in relation to obligations that are not secured under the Personal Property Securities Act 2009 ("PPSA"), in the order in which those obligations were incurred;
- 2.3.2 Second, in relation to obligations that are secured, but not by purchase money security interests, in the order in which those obligations were incurred, then,
- 2.3.3 Third, in relation to obligations that are secured by purchase money security interests, in the order in which those obligations were incurred.

- 2.4 The Customer is liable for all reasonable expenses (including contingent expenses such as debt collection commission) and legal costs (on a full indemnity basis) incurred by Axiom for enforcement of obligations and recovery of monies due from the Customer to Axiom.

3. Quotation and Pricing

- 3.1 Prices charged for Goods will be according to a current quotation for those Goods. Otherwise, they will be determined by Axiom by reference to its standard prices in effect at the date of delivery (whether notified to the Customer or not and regardless of any prices contained in the order). Axiom will use its best endeavours to notify the Customer of price changes but bears no liability in respect of this.
- 3.2 Any quotation by Axiom shall not constitute an offer. Quotations are E&OE and will remain valid for fourteen (14) days from the date of the quotation. Quotations are subject to rise and fall in cost of materials.

3.3 Any quotation, acceptance of quotation, purchase order or other document which requires signature may be signed in electronic form, and such signature shall be binding upon the person affixing that signature.

3.4 Unless otherwise specified by Axiom, the prices exclude:

3.4.1 Any statutory tax, including any GST, duty or impost levied in respect of the Goods and which has not been allowed for by Axiom in calculating the price.

3.4.2 Costs and charges in relation to insurance, packing (other than the standard packing of Axiom), crating, delivery (whether by road, rail, ship or air) and export of the Goods.

3.5 In respect of any goods to be manufactured, Axiom reserves the right to require complete payment of goods in full before commencing manufacture. Any lead times run from the date of receipt of payment by Axiom.

4 Delivery & Supply

4.1 Any times quoted for delivery and/or supply are estimates only and Axiom shall not be liable for failure to deliver/supply, or for delay in delivery/supply. The Customer shall not be relieved of any obligation to accept or pay for Goods, by reason of any delay in delivery/supply or dispatch. Axiom reserves the right to stop supply at any time if the Customer fails to comply with the Terms.

4.2 Axiom may refuse to supply any order by the Customer for Goods in its absolute discretion and may make acceptance of any order conditional upon it receiving a satisfactory credit assessment of the Customer.

4.3 If the Customer directs that delivery of the Goods be staggered over different times or to

different addresses from those specified in the Credit Application, then the Customer:

4.3.1 shall be liable for any additional costs, charge and expenses incurred by Axiom in complying with the Customer's direction; and

4.3.2 shall pay for the whole of the invoiced value of the Goods notwithstanding the staggered deliveries.

4.4 The Customer is deemed to accept delivery of the Goods where it is either delivered to the Customer's premises or when Axiom notifies the Customer that the Goods are available for collection.

5 Property

Until full payment has been made for all Goods, and any other sums in anyway outstanding from the Customer to Axiom from time to time:

5.1 All sums outstanding become immediately due and payable by the Customer to Axiom if the Customer makes default in paying any other sums due to Axiom, becomes bankrupt, or commits any act of bankruptcy, compounds with its creditors, has judgment entered against it in any court, or, being a company, has a provisional liquidator, liquidator, receiver, receiver manager or administrator appointed, notwithstanding the provisions of any other clause in these Terms.

5.2 The property in the Goods shall not pass to the Customer and the Customer shall hold the Goods as bailee for Axiom (returning the same to Axiom on request). The Goods shall nevertheless be at the risk of the Customer from the time of delivery/supply and the Customer must insure the Goods from the time of delivery/supply.

5.3 The Customer is only authorised to sell the Goods (or any portion of them) to third parties as the fiduciary agent of Axiom

provided that there shall be no right to bind Axiom to any liability to such third party by contract or otherwise. All payments (direct or indirect) received from such third parties by the Customer for the Goods (or any portion of them) shall be held on trust for Axiom pursuant to the fiduciary relationship.

- 5.4 In the event that the Customer incorporates or transforms the Goods (or any portion of them) into any other goods or products produced by the Customer (or a third party), then the Customer must hold a proportion of any payment ("relevant proportion") received by the Customer for such goods or products on trust for Axiom. The Customer expressly acknowledges that the relevant proportion shall be equal to the proportion that the dollar value of the Goods bears to the total value of the Goods incorporated or transformed and the Customer further acknowledges that any part payment (not exceeding the relevant proportion) received by the Customer for such goods or products is received as payment first of the relevant proportion.
- 5.5 Axiom is irrevocably authorised to enter any premises where the Goods are kept, and to use the name of the Customer and to act on its behalf, if necessary, to recover possession of the Goods without liability for trespass or any resulting damage.

6 Availability of Stock

Any order that cannot be fulfilled on its receipt will automatically be back ordered and processed when stock becomes available unless it is the Customer's written standard policy not to accept back orders or the Customer specifically marks its order "Do Not Back Order". Deliveries at any time are subject to availability of stock and Axiom will not be liable for any charges due to product unavailability.

7 Freight

Subject to clause 3.4 and unless otherwise agreed, Axiom will ship by the least expensive route and carrier to all points. If the Customer chooses a route with a higher charge than the route of Axiom's choice for shipment, Axiom will charge the difference to the Customer.

8 Returns, Cancellations and Claims

- 8.1 The Customer shall not return any Goods to Axiom without obtaining prior authorisation in writing from Axiom. No returns will be accepted unless a copy of the relevant invoice is enclosed with the returned Goods. A list of the Goods returned including product description, quantity, date of return and the Customer's name and address must also be enclosed. Freight charges must be paid by the Customer. All Goods must be returned in the original packaging and the Customer shall be responsible for all damage incurred during return shipment. A credit note will be issued by Axiom only after Goods returned are either collected by Axiom's authorised representative or agent or returned to it by the Customer as set out above. The Customer shall not deduct the amount of any anticipated credit from any payment due to Axiom but must await receipt of a credit note.
- 8.2 All goods returned must be of merchantable and reasonable quality such that the goods are complete in their original packaging, not shop-soiled, are not price ticketed and are still listed in the current price list.
- 8.3 If Axiom accepts the return of any Goods that have been ordered, Axiom may charge the Customer fifteen per cent (15%) of the invoice price as a handling fee with freight costs and risk remaining the responsibility of the Customer.
- 8.4 No cancellations or partial cancellation of any order by the Customer shall be accepted by Axiom unless it has first consented in writing to such cancellation or partial cancellation and unless a cancellation charge has been

paid which, as determined by Axiom, will indemnify Axiom against all loss, without limitation. Cancellation will not be accepted on goods that are not regular stock which are in the process of manufacture or ready for shipment.

- 8.5 All complaints, claims or notifications of lost Goods, incomplete Goods, Goods damaged in transit or Goods that do not comply with the Customer's purchase order must be submitted by the Customer to Axiom in writing within seven (7) business days of the date of the invoice rendered for the supply of the Goods. Otherwise, the Customer shall be deemed to have accepted the Goods and shall not refuse to pay for the Goods on the basis that they were lost, incomplete damaged in transit, or do not comply with the Customer's purchase order.

9 Privacy Act 1988 ("Privacy Act")

To enable Axiom to assess the Customer's application for credit, the Customer authorises Axiom:

- 9.1 To obtain from a credit reporting agency a consumer or commercial credit report containing personal information about the Customer, its guarantors, its directors and partners (including spouse and de facto partner as defined in the *Acts Interpretation Act 1901*) pursuant to Section 18(K) of the Privacy Act; and
- 9.2 To obtain a report from a credit reporting agency and other information in relation to the Customer's commercial credit activities; and
- 9.3 To give to a credit reporting agency information including identity particulars and application details.

AND in accordance with Section 18(N) of the *Privacy Act* the Customer authorises Axiom to give to and obtain from any credit provider named in the accompanying credit application and credit

providers that may be named in a credit report issued by a credit reporting agency information about the Customer's credit arrangements. The Customer understands that this information can include any information about its credit worthiness, credit standing, credit history or credit capacity that credit providers are allowed to give or receive from each other under the *Privacy Act*.

The Customer understands that information can be used for the purposes of assessing its application for credit (Section 18L(4) Privacy Act), assisting it to avoid defaulting on its credit obligations, assessing its credit worthiness, assisting Axiom in the exercise of Axiom's rights against it, maintaining its credit account with Axiom (including during and following any re-structure of Axiom), notifying other credit providers and credit reporting agencies of a default by it under these Terms, and agrees that Axiom may disclose personal information to any person reasonably appropriate by Axiom to achieve such purposes.

- 9.4 Axiom adheres to the National Privacy Principles in respect of any personal information collected from an individual. In respect of such personal information, Axiom discloses that:

9.4.1 The identity of Axiom and how to contact Axiom are set out on the Credit Application.

9.4.2 The individual is entitled to access to the personal information collected.

9.4.3 The personal information is collected for the purpose of processing the Credit Application and the application for the supply of the Goods, maintaining the Customer's credit account (including during and following any re-structure of Axiom) and assisting Axiom in the exercise of its rights against the Customer.

9.4.4 The only organizations to which Axiom discloses the personal information are credit reporting agencies, its trade insurer, its debt recovery agents (to the extent permitted under the Act) or any

person considered reasonably appropriate by Axiom to achieve any of the purposes in 9.4.3.

- 9.4.5 The consequence if the personal information is not provided is that Axiom will be unable to process the application for credit and/or the application for supply of goods.

10 Notification

The Customer must notify Axiom in writing within seven (7) days of:

- 10.1 Any alteration of the name or ownership of the Customer.
- 10.2 The issue of any legal proceedings against the Customer.
- 10.3 The appointment of any provisional liquidator, liquidator, receiver, receiver manager or administrator to the Customer.
- 10.4 Any change in the ownership of the business name of the Customer. The Customer agrees that it shall be liable to Axiom for all Goods supplied to the new owner by Axiom until notice of any such change is received.

11 Warranties

- 11.1 No warranties except those implied and that by law cannot be excluded are given by Axiom in respect of Goods supplied. Where it is lawful to do so, the liability of Axiom for a breach of a condition or warranty is limited to the repair or replacement of the Goods, the supply of equivalent Goods, the payment of the cost of repairing or replacing the Goods or acquiring equivalent Goods, as determined by Axiom.
- 11.2 In no event shall Axiom be liable for any indirect, incidental or consequential damages including for economic loss, loss of profits or damage to goodwill.
- 11.3 The Customer acknowledges and warrants that it has relied on its own skill and

judgment or, alternatively, on the skill and judgment of tradesmen and professional advisers retained by it to provide advice and assistance on the suitability of the Goods for specific purposes and procedures and, in this respect, shall indemnify Axiom from and against any suit, claim, demand or compensation which, but for these Terms, the Customer may have had against Axiom.

- 11.4 All products supplied by Axiom are manufactured within tolerances set out in the relevant Australian Code.

- 11.5 The Customer warrants to Axiom that it is purchasing Goods as the principal and not as an agent.

12 Heat Soaked Glass

- 12.1 All monolithic toughened glass and heat strengthened glass (with a surface compression greater than 52MPa) is required to be heat soaked and marked in accordance with European Standard EN14179-1 unless exempt under AS1288-2006 clause 3.8.
- 12.2 It is responsibility of the Customer to satisfy itself and to advise Axiom in writing if glass to be supplied by Axiom to the Customer is required to be heat soaked.
- 12.3 Axiom shall not be liable for any claim, loss or damage raised or sustained by the Customer arising from failure to heat soak glass supplied by Axiom to the Customer if the Customer fails to give the written advice referred to in the preceding subclause.
- 12.4 The Customer shall indemnify Axiom in respect of any claim for death, personal injury or damage to property by a third party arising out of Axiom's failure to treat soak any glass supplied by Axiom to the Customer in respect of which the Customer has failed to give Axiom the written advice required by this clause.

13 Force Majeure

Axiom shall be released from its obligations in the event of national emergency, war, prohibitive governmental regulation or if any other cause beyond the control of the parties renders provision of the Goods impossible, whereupon all money due to Axiom shall be paid immediately and, unless prohibited by law, Axiom may elect to terminate the Agreement.

14 Equitable charge

The Customer as beneficial owner and/or registered proprietor now charges in favour of Axiom all of the Customer's estate and interest in any real property now or hereafter owned (including but not limited to any applicable land owned by the Customer named or described as the Customer's Street Address in the Credit Application if applicable) ("Land") to secure payment of accounts rendered by Axiom to the Customer for the delivery and/or supply of the Goods including interest payable on these accounts and costs (including legal costs on a full indemnity basis) incurred by Axiom and including the costs to prepare and lodge a Caveat against the Land and to remove the Caveat.

15 Security Interest under the PPSA

15.1 The Customer agrees that:

15.1.1 each order accepted by Axiom, being an order accepted under these Terms and Conditions, creates a registrable security interest under the PPSA in any Goods supplied under it;

15.1.2 the Customer acknowledges the right of Axiom to register a financing statement under the PPSA with respect to the security interest created by these Terms and Conditions;

15.1.3 if a Company registers a security interest under the PPSA, Axiom may exercise any or all remedies afforded to Axiom as a secured party under it without prejudice to any other rights or remedies arising out of a breach by the Customer of any agreement with Axiom; and

15.1.4 the Goods are collateral for the purposes of the PPSA.

15.2 The Customer waives any right the Customer has under the PPSA to receive notice in relation to registration events.

15.3 The Customer and Axiom agree that neither will disclose information of the kind specified in Section 275 (1) of the PPSA.

15.4 At the election of Axiom to be exercised at any time in its absolute discretion, any section of the PPSA specified in Section 115 will not apply to the extent permitted by Section 115.

16 Failure to Act

Axiom's failure to enforce or insist upon the timely performance of any term, condition, covenant or provision in these Terms, or Axiom's failure to exercise any right or remedy available under these Terms or at law, or Axiom's failure to insist upon timely payment of monies when due or to demand payment of any charges or fees which accrue or any extension of creditor forbearance under these Terms shall not constitute a waiver of any subsequent default or a waiver of Axiom's right to demand timely payment of future obligations or strict compliance with the Terms.

17 Intellectual Property Rights

17.1 The Customer acknowledges that the intellectual property rights to Axiom's products are vested in Axiom and are fully protected by law.

17.2 The Customer agrees not to copy or reproduce any of Axiom's products without Axiom's written consent.

18 Legal Construction

18.1 These Terms shall be governed by and interpreted according to the laws of Victoria and Axiom and the Customer consent and submit to the jurisdiction of the Courts of Victoria.

18.2 Notwithstanding that any provision of the Terms may provide to be illegal or unenforceable pursuant to any statute or rule of law or for any other reason that provision is deemed omitted without affecting the legality of the remaining provisions and the remaining provisions of the Terms shall continue in full force and effect.