

Office/ Factory
4/65 Solomon Road
Jandakot WA 6164
08 9418 6222
info@wacustomglass.com.au
wacustomglass.com.au
Mon-Fri 9:00-4:00
ABN:14 155 254 726

WA CUSTOM GLASS STANDARD CONDITIONS OF SUPPLY AND INSTALLATION

1 DEFINITIONS

- 1.1 In this document the following definitions apply:
- 1.1.1 **Contract** means the contract entered into by the Customer and WA Custom Glass in respect of the subject matter of the Quotation and is comprised of:
 - (a) the terms and conditions of this document;
 - (b) the Quotation;
 - (c) such other documents as are incorporated into the Contract by the Quotation;
 - 1.1.2 **Customer** means the person identified in the Quotation as engaging WA Custom Glass to perform the Works;
 - 1.1.3 **Customer-Supplied Items** means any and all items, materials, goods, services or facilities to be supplied by the Customer to WA Custom Glass under the Contract, being required to complete the Works;
 - 1.1.4 **Deliverables** means any services, products, materials, goods or things being supplied to the Customer as part of the Works;
 - 1.1.5 **Delivery Date** means the date that the Deliverables are supplied to the Customer and, in respect of physical things, the date of physical supply to the Customer's premises;
 - 1.1.6 **WA Custom Glass** means Prime Path Pty Ltd t/as WA Custom Glass;
 - 1.1.7 **WA Custom Glass Materials** means all materials, plant, tools, equipment, documents and other property of WA Custom Glass required to be utilised in the performance of the Works;
 - 1.1.8 **PPSA** means *Personal Property Securities Act 2009* (Cth);
 - 1.1.9 **PPSR** means Personal Property Securities Register;
 - 1.1.10 **Price** means the Price for the Works referred to in the Quotation and payable by the Customer to WA Custom Glass for performance of the Works;
 - 1.1.11 **Quotation** means the Quotation being given by WA Custom Glass to the Customer;
 - 1.1.12 **Security Agreement** means the security agreement under the PPSA created between the Customer and WA Custom Glass by these terms;
 - 1.1.13 **Security Interest** has the meaning given to it in the PPSA;
 - 1.1.14 **Works** means the works, including the procuring and supply of Deliverables, to be performed by WA Custom Glass for the Customer as set out in the Quotation.

2 GENERAL

- 2.1 The Quotation has been given on the assumption that the terms of this document are applicable. The Quotation is valid for 30 days unless otherwise indicated on the Quotation.
- 2.2 The terms set out in this document apply to the Quotation despite anything in any request for tender/request for quotation (or other Customer generated document or communication) to the contrary.
- 2.3 The Customer will be deemed to accept the Quotation and a Contract shall be formed on the terms set out in this document (and to the exclusion of any competing terms or conditions in any Customer document) in the following circumstances:
- 2.3.1 the Customer indicates that it accepts the Quotation; or
 - 2.3.2 the Customer requests WA Custom Glass to commence any part of the work the subject of the Quotation.
- For the avoidance of doubt, WA Custom Glass shall be entitled (as a condition of commencement of performance of the Contract) to insist that the Customer sign the Quotation (in the manner described in the Quotation), including where the *Home Building Contracts Act 1991* (WA) applies.
- 2.4 The Contract is subject to the laws of Western Australia and the parties submit to the exclusive jurisdiction of Western Australian courts.

- 2.5 The Price is given on the assumption that the terms of this document form part of the Contract. Where the Customer wishes to negotiate or otherwise seeks a deviation from the terms of this document (or the Quotation):
- 2.5.1 the Customer must notify WA Custom Glass of its intention to negotiate;
 - 2.5.2 WA Custom Glass' express written agreement is required to any departure from the terms of this document or the Quotation;
 - 2.5.3 WA Custom Glass is entitled, acting reasonably, to withdraw or revise its Price and Quotation having regard to the extent to which the Customer's requested terms of contracting differ from the terms of this document and the Quotation, including as to risk allocation between WA Custom Glass and the Customer.

3 PRICE EXCLUSIONS

- 3.1 Unless expressly stated to the contrary in the Quotation, the Price includes no allowance for the following excluded matters:
- 3.1.1 anything expressly indicated in the Quotation as being excluded from the Price;
 - 3.1.2 any additional work beyond glazing needed including tiling, painting, rendering, or any other trade not associated with glazing;
 - 3.1.3 compliance with any site induction, personnel on-boarding, or HSE requirements beyond those ordinarily in place on residential construction sites in the Perth metropolitan area;
 - 3.1.4 compliance with any contract between the Customer and another party;
 - 3.1.5 the need for more than one site mobilisation and demobilisation;
 - 3.1.6 delay or disruption to the Works for reasons beyond WA Custom Glass' reasonable control;
 - 3.1.7 a change in the sequence or timing of Works (or part thereof) for reasons beyond WA Custom Glass' control;
 - 3.1.8 the need for location, treatment, protection, relocation or removal of services, such as power, water, electricity;
 - 3.1.9 the need for treatment or disposal of any unsuitable, hazardous or contaminated material including asbestos;
 - 3.1.10 the need for dust control measures; or
 - 3.1.11 the need to work outside of usual business hours.
- WA Custom Glass shall be entitled to additional reasonable payment and time if WA Custom Glass is required to address or overcome any of the above excluded matters (including by express direction from the Customer or where WA Custom Glass considers it is reasonably necessary). WA Custom Glass must give prompt notice in writing of any claim against the Customer in this regard.
- 3.2 Unless otherwise expressly specified in the Quotation, WA Custom Glass shall not in any event be responsible for any defect, discrepancy, error or omission in any work that is carried out by the Customer or its agents, contractors, consultants and affiliates.
- 3.3 WA Custom Glass is not responsible for any damage due to circumstances or events beyond WA Custom Glass' control. This includes but is not limited to any damage to property or the Works which:
- 3.3.1 is caused by the Customer, or its agents or other contractors;
 - 3.3.2 cannot be reasonably avoided in the performance of the Works, including any damage to existing surfaces (such as tiles, render, beading); or
 - 3.3.3 is caused by improper protection, care and maintenance of the Works by the Customer.
- 3.4 In undertaking the Works, noise, dust and other debris may be produced. Unless otherwise expressly agreed in the Quotation, WA Custom Glass is not liable for any need for any person or thing to vacate any area on or near where the Works are performed due to noise, dust or debris, or for any damage or disturbance that the dust or debris may cause.

4 TIME FOR PERFORMANCE

- 4.1 As to the time for performing the works:
- 4.1.1 time shall not be of the essence for the commencement or performance of the Works;
 - 4.1.2 WA Custom Glass shall have a reasonable period of time within which to commence and perform the Works (and any agreed variation thereof); and
 - 4.1.3 WA Custom Glass shall use reasonable endeavours to meet any performance dates/milestones referred to in the Contract, but any such dates/milestones shall be estimates only.

5 CUSTOMER'S OBLIGATIONS

- 5.1 Except to the extent otherwise expressly stated in the Quotation, the Customer is obliged to:
- 5.1.1 ensure that any information supplied to WA Custom Glass by or on behalf of the Customer, is complete, accurate and suitable for its intended purpose;



- 5.1.2 obtain and maintain all necessary approvals, permissions and consents which may be required for the Works to be performed at the premises or site in which they are being performed;
- 5.1.3 promptly provide WA Custom Glass with such information as WA Custom Glass may reasonably require in order to undertake the Works in a safe, timely and efficient manner;
- 5.1.4 ensure that WA Custom Glass is not interrupted or disrupted in the performance of the Works (including by any other contractor that may be operating on site);
- 5.1.5 provide WA Custom Glass with adequate, continuous and uninterrupted access to the areas in which WA Custom Glass will be required to work in order to perform this Contract, including provision of:
 - (a) suitable loading, unloading and parking areas;
 - (b) laydown areas at the site for temporary storage of WA Custom Glass Deliverables and WA Custom Glass Materials;
- 5.1.6 provide all water, power and ablutions services and facilities as are necessary or desirable for the timely and safe performance of WA Custom Glass' works;
- 5.1.7 ensure that the site where WA Custom Glass will be carrying out any part of the Works is clean, safe and free of any obstructions and or debris which would disrupt or delay WA Custom Glass' performance of the Works;
- 5.1.8 ensure that the Works remain protected against damage during any time when WA Custom Glass is not on site;
- 5.1.9 take reasonable steps to ensure the safety of WA Custom Glass' staff while on site, comply with all applicable occupational health and safety legislation, and do all things necessary to ensure that any other contractor, servant, agent, guest or client of the Customer does not injure any WA Custom Glass staff;
- 5.1.10 in relation to all WA Custom Glass Materials that are located at the Customer's premises or left in the Customer's custody or possession:
 - (a) keep and maintain those WA Custom Glass Materials in safe custody and in good condition at its own risk;
 - (b) not dispose of or use or encumber those WA Custom Glass Materials, other than in accordance with WA Custom Glass' written consent; and
 - (c) pay on demand the replacement cost of any of those WA Custom Glass Materials that are lost or stolen while at the Customer's premises or in the Customer's possession or custody;
- 5.1.11 where there are Customer-Supplied Items, ensure the Customer-Supplied Items are fit for purpose and supplied in a timely fashion and in such manner so as to permit WA Custom Glass to perform its obligations under the Contract in a safe, efficient and orderly fashion.

5.2 Any breach of the Customer's obligations in paragraph 5.1 shall entitle WA Custom Glass to claim reasonable additional payment and time.

6 DEFECTIVE WORKS

- 6.1 Where the Customer considers any aspect of the Works to be defective, the Customer must give WA Custom Glass:
 - 6.1.1 notice of that defect in writing within 7 days of the Customer becoming aware of the defect;
 - 6.1.2 a reasonable opportunity to inspect and test (including via a consultant or expert) the alleged defective aspect of the Work; and
 - 6.1.3 a reasonable opportunity to attend to rectification of any defective Works.

7 VARIATIONS

- 7.1 The Customer may request WA Custom Glass in writing to vary the scope of the Works (within the general scope of the Contract) for a reasonable price but WA Custom Glass shall not be obliged to agree to any such variation. WA Custom Glass will accommodate reasonable requests to vary the scope of the Works but shall not be obliged to carry out any variation work without the price of the variation being agreed first. Where WA Custom Glass agrees to carry out a variation it will issue a notice of variation setting out the terms on which the variation will be performed, which the Customer shall sign.

8 PAYMENT TERMS

- 8.1 Subject to clause 8.2, WA Custom Glass will be paid (including GST component):
 - 8.1.1 at the time or times stated in the Quotation;
 - 8.1.2 to the extent that the Quotation does not state times for payment:
 - (a) where the Customer requires supply of Deliverables (excluding services) only, prior to supply of the Deliverables to site; and



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- (b) in all other cases, no later than 14 days from date of claim/invoice by WA Custom Glass.
- 8.2 Where the *Home Building Contracts Act 1991 (WA)* applies:
 - 8.2.1 the Contract must be read consistently with that legislation despite anything in its terms to the contrary; and
 - 8.2.2 WA Custom Glass will paid (including GST component) as follows:
 - (a) a deposit of 6.5% of the Price payable on demand before the commencement of work under the Contract; and
 - (b) thereafter, amounts (claimable progressively) calculated on the basis of the value of work already performed or materials or services already supplied by WA Custom Glass.
- 8.3 For the purposes of clause 8.2.2(a) above, any schedule of milestone progress payments set out in the Quotation shall apply (to the extent consistent with the *Home Building Contracts Act 1991 (WA)*). Otherwise, WA Custom Glass shall reasonably estimate the claimable value at the time of claiming payment.
- 8.4 WA Custom Glass may claim payment (including progressive payment) in any reasonable form including by way of tax invoice.
- 8.5 The Price is not inclusive of GST and if GST is or will be applicable in respect of WA Custom Glass' supply, WA Custom Glass may issue a tax invoice and increase the consideration provided for the supply by the amount of the GST or otherwise recover from the Customer the amount of that GST.
- 8.6 Interest shall accrue on any overdue payment at the rate of 12% per annum until payment is made.

9 LIMITATIONS OF LIABILITY

- 9.1 Except as expressly set out in the Quotation, all warranties implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract. This does not exclude any statutory warranty applicable to the Customer under the *Australian Consumer Law* (or equivalent State legislation) which is not capable of being excluded by agreement.
- 9.2 To the maximum extent permitted by law, WA Custom Glass shall under no circumstances whatsoever be liable to the Customer (or any client of the Customer), whether in contract, tort, breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract or the performance of the Works.
- 9.3 To the maximum extent permitted by law, to the extent the Deliverables are comprised of physical objects, WA Custom Glass' liability for anything in relation to the Deliverables, their use, or their construction, or otherwise under or in connection with the Contract is limited, in WA Custom Glass' discretion, to either:
 - 9.3.1 replacing the relevant Deliverable with the same or equivalent Deliverable, or paying the cost of such replacement Deliverable; or
 - 9.3.2 repairing the Deliverable or paying for its repair.
- 9.4 To the maximum extent permitted by law, to the extent the Deliverables are comprised of services, non-physical things or the like, WA Custom Glass' liability for anything in relation to the performance of those services or things as part of the Works is limited, in WA Custom Glass' discretion, to either:
 - 9.4.1 the supply of those services or things again; or
 - 9.4.2 payment of the cost of having the services or things supplied again.
- 9.5 Nothing in the above limitations shall limit or exclude WA Custom Glass' liability for:
 - 9.5.1 death or personal injury caused by WA Custom Glass' negligence, or the negligence of its employees, agents or subcontractors; or
 - 9.5.2 fraud.

10 PERSONAL PROPERTY SECURITIES ACT

- 10.1 For the purposes of this clause, '**Contractor's Personal Property**' means all personal property the subject of the Security Interest granted in favour of WA Custom Glass under this Quotation or the Contract.
- 10.2 The Customer agrees that the provision of the Deliverables pursuant to this Quotation or the Contract:
 - 10.2.1 constitutes a Security Agreement for the purposes of the PPSA; and
 - 10.2.2 creates a Security Interest in:
 - (a) all Deliverables previously supplied by WA Custom Glass to the Customer (if any); and
 - (b) all Deliverables that will be supplied in the future to the Customer.
- 10.3 The Customer undertakes to:
 - 10.3.1 promptly do anything which WA Custom Glass reasonably asks and considers reasonably necessary for the following purposes:
 - (a) ensuring that the Security Interest is enforceable, perfected and otherwise effective with respect to the PPSR;

- (b) enabling WA Custom Glass to apply for any registration, complete any financing statement or financing change statement or give any notification, in connection with the Security Interest so that WA Custom Glass has the priority reasonably required by it;
 - (c) correcting a defect in a statement lodged under the PPSA; and
 - (d) enabling WA Custom Glass to exercise any rights in connection with the Security Interest.
- 10.3.2 not register, or permit to be registered, a financing statement or a financing change statement in relation to the Deliverables in favour of a third party without the prior written consent of WA Custom Glass.
- 10.4 WA Custom Glass need not give, and the Customer waives any right to receive, any notice under the PPSA (including notice of a verification statement) unless the notice is required by the PPSA to be given and cannot be excluded. To the extent permitted under the PPSA, the Customer hereby waives its rights to receive all notices under the PPSA including, without limitation, sections 95, 125, 130, 132(3)(d), 132(4), 142 and 143 of the PPSA. These will not apply to any Security Interest created under Quotation and Contract.
- 10.5 Nothing in this document will be taken or construed as an agreement or consent by WA Custom Glass to:
 - 10.5.1 subordinate WA Custom Glass' interest in the Contractor's Personal Property (or any part thereof) to any other encumbrance or interest affecting Contractor's Personal Property at any time; or
 - 10.5.2 delay the time when a Security Interest created or provided for under the document attaches to the relevant collateral.
- 10.6 The Customer must notify WA Custom Glass in writing as soon as the Customer becomes aware of any of the following:
 - 10.6.1 if any personal property which does not form part of Contractor's Personal Property becomes an accession to Contractor's Personal Property and is subject to a security interest in favour of a third party, that has attached at the time it becomes an accession; and
 - 10.6.2 upon request by WA Custom Glass, of the present location or situation of any Contractor's Personal Property.

11 OWNERSHIP AND RISK

- 11.1 Risk of loss or damage to the Deliverables passes to the Customer on the Delivery Date.
- 11.2 The Customer is responsible for ensuring that it has insurance in place to cover the replacement and reinstatement cost of any property upon which WA Custom Glass will be working, as well as any WA Custom Glass Materials stored on the Customer's premises from time to time.
- 11.3 The Customer agrees that legal and equitable title to the Deliverables is retained by WA Custom Glass and does not pass to the Customer until WA Custom Glass has received payment in full for the Deliverables and all other moneys owed by the Customer to WA Custom Glass.
- 11.4 If the Customer fails to pay moneys owed to WA Custom Glass under the Contract, without limitation of WA Custom Glass' rights:
 - 11.4.1 WA Custom Glass may recover or retake possession of all or any of the Deliverables and dispose of such Deliverables;
 - 11.4.2 the Customer grants WA Custom Glass and any person reasonably authorised by WA Custom Glass a licence to enter without notice and at any time any property where any Deliverables are placed or stored and do all things and use such force as is reasonably necessary in order to recover or retake possession of the Deliverables; and
 - 11.4.3 the Customer accepts liability for the safe custody and return of the Deliverables to WA Custom Glass and indemnifies WA Custom Glass for any costs and/or loss thereto.

12 INSURANCE WORK

- 12.1 Where the Works are being procured by or with the assistance of an insurer of the Customer:
 - 12.1.1 the Customer shall remain liable to WA Custom Glass under the Contract including in respect of any insurance excess not covered by the insurance;
 - 12.1.2 the Customer shall remain liable for insuring any payments originating from its insurer reach WA Custom Glass; and
 - 12.1.3 WA Custom Glass may require (before commencing performance of the Contract) an advance payment of an amount to reflect the known or reasonably estimated value of the insurance excess (and if this amount is estimated and is greater than the excess ultimately applicable, WA Custom Glass shall refund the difference).

13 SUBCONTRACTING

- 13.1 WA Custom Glass has the right to subcontract the performance of any part of the work under the Contract to a subcontractor of its choosing.



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14 DEFAULT AND TERMINATION

- 14.1 Without limitation of its rights at law or in this Contract, WA Custom Glass may terminate this Contract by notice to the Customer in writing in the following circumstances:
- 14.1.1 the Customer is in breach of a material obligation of the Contract which is not promptly remedied to WA Custom Glass's satisfaction upon the Customer being given notice of the breach; or
 - 14.1.2 WA Custom Glass (acting reasonably) considers that the Customer is not (or will not be) ready, willing and able to comply with any of its material obligations under this Contract.
- 14.2 The Customer may request WA Custom Glass to cancel the Contract by agreement but WA Custom Glass shall not be obliged to agree to any cancellation and may do so subject to conditions.
- 14.3 Where the Contract is terminated (other than due to default of WA Custom Glass) or cancelled, at a minimum WA Custom Glass must be compensated for its costs incurred (or to be unavoidably incurred) in anticipation of performance of the Contract (to the extent that such costs are not already covered by payments previously made by the Customer under the Contract). In addition, where the Contract is terminated due to the default of the Customer, the Customer shall also be liable for a reasonable sum in respect of WA Custom Glass's loss of profit sustained by reason of the termination.
- 14.4 Without limitation of its rights, WA Custom Glass may also suspend performance of the work under the Contract where the circumstances in clause 14.1 prevail.

15 DISPUTES

In the event of a dispute arising out of or in relation to the Contract or its termination, either party wishing to resolve the dispute must issue a notice of dispute to the other party setting out particulars of the dispute and a proposal for resolution. The parties must meet in good faith within 14 days thereafter, failing which either party may commence legal proceedings in respect of the dispute.

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