

Terms & Conditions of Sale

These are the terms and conditions of sale of Melbourne Safety Glass applicable to all transactions between it and its Customers.

1. DEFINITIONS AND INTERPRETATION

1. “**Melbourne Safety Glass**” means Melbourne Safety Glass ABN 82 108 548 223 and its successors, assigns, subsidiaries, affiliates and associates.
2. “**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.
3. “**Customer**” means the person to whom the Quotation is addressed and/or any person who accepts it.
4. “**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.
5. “**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.
6. “**Domestic Building Acts**” means:
 1. the *Home Building Act 1989* (NSW);
 2. the *Domestic Building Contracts Act 2000* (Qld);
 3. the *Domestic Building Contracts Act 1995* (Vic); and
 4. the *Home Building Contracts Act 1991* (WA),

as amended from time to time, and includes any other laws or regulations which imply certain warranties into the contract between Melbourne Safety Glass and the Customer.

7. “**Goods**” means the Goods the subject of the Quotation.
8. “**Jurisdiction**” means the State or Territory in which the Quotation was issued.
9. “**Order**” means the acceptance of the Quotation in whole or in part by the Customer.
10. “**person**” includes companies.
11. “**Quotation**” means the document issued by Melbourne Safety Glass outlining its estimate of the cost for the provision of specified Goods and Services.
12. “**Services**” means the Services, if any, to be supplied with the Goods and the subject of the Quotation.
13. “**PMSI**” has the meaning set out under section 14 of the PPSA.
14. “**PPSA**” means the *Personal Property Securities Act 2009*.
15. “**PPSR**” means the Personal Property Securities Register.
16. “**Security Interest**” has the meaning set out under section 12 of the PPSA.
17. “**Standard Fulfilment Process**” means Melbourne Safety Glass’ standard process for fulfilment of Customer orders, as determined by Melbourne Safety Glass from time to time.
18. Headings are for convenience only and do not form part of these terms and conditions of sale.
19. Reference to the singular includes the plural and the plural includes the singular.
20. Reference to one gender includes the others.

2. PLACING ORDER

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 Melbourne Safety Glass’ terms and conditions of sale.

3. TERMS OF PAYMENT

1. Payment is subject to any terms agreed between Melbourne Safety Glass and the Customer in writing. In the absence of such written agreement, but 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.
2. The Customer is not entitled to defer, offset or withhold payment in whole or in part for any reason unless agreed to by Melbourne Safety Glass in writing.
3. If at any time monies are overdue, then at the option of Melbourne Safety Glass (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.
4. Melbourne Safety Glass may, at its absolute discretion, charge interest on all overdue accounts at the rate of 2% per month calculated on daily rests and to charge for any expenses incurred in collecting or attempting to collect any overdue monies, including any debt collector’s expenses incurred, or to be incurred.

5. The Customer acknowledges receiving written details of Melbourne Safety Glass' Standard Fulfilment Process prior to placing the Order. If, due to any acts or omissions of the Customer, Melbourne Safety Glass is required to deviate from the Standard Fulfilment Process in order to fulfil the Order, Melbourne Safety Glass may, in its absolute discretion, charge the Customer to the fullest extent permitted by law for any additional costs incurred by Melbourne Safety Glass in so doing.
6. Despite anything of the contrary contained herein or any other rights which Melbourne Safety Glass may have at law or under these terms and conditions:
 - a) The customer hereby grants a PMSI and/or charge in favour of Melbourne Safety Glass over any Goods the Customer has acquired from Melbourne Safety Glass to secure payment of the Goods in accordance with these terms and conditions and the provisions of the PPSA;
 - b) Melbourne Safety Glass agrees to take a PMSI and/or charge over the Goods, which gives Melbourne Safety Glass a Security Interest that shall be registered on the PPSR;
 - c) The Customer shall do all such things and sign all such documents as are necessary and reasonably required to enable Melbourne Safety Glass to acquire a perfected Security Interest in the Goods;
 - d) The Customer agrees to provide all such information as is required to enable registration of the PMSI and/or charge on the PPSR;
 - e) The Customer acknowledges that a "PMSI" and/or charge is granted priority to all other creditors of the Customer in relation to the Goods;
 - f) The Customer authorises under section 275(7)(c) of the PPSA, the disclosure of information by a secured party under section 275(4) of the PPSA in response to any request for information from an interested person pursuant to sections 275(1) to (3) of the PPSA;
 - g) The Customer will not without written notice to Melbourne Safety Glass, change its name or initiate any change to any documentation registered under the PPSA in relation to these terms and conditions; and
 - h) Melbourne Safety Glass undertakes to maintain accuracy of the registered Security Interest and to remove the registration when the Customer has paid all amounts owe to Melbourne Safety Glass in relation to the Goods.

4. ABILITY TO SUPPLY

1. Any obligation of Melbourne Safety Glass 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.
2. Melbourne Safety Glass shall not be liable in anyway 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 on account of such failure to deliver within the stated time.
3. Melbourne Safety Glass 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, interruption of transportation, accidents, war, governmental action or other circumstances beyond Melbourne Safety Glass' control.
4. If for any reason Melbourne Safety Glass is unable to perform its obligations under the Contract, then Melbourne Safety Glass 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 Melbourne Safety Glass and save for the recovery of the deposit neither party will have any claim against the other.

5. PRICES

1. Except for sub-clause 5.2, the prices on the Quotation shall remain current for 30 days. Melbourne Safety Glass reserves the right to vary the prices after lapse of 30 days, to the extent permitted by law.
2. Quotations given for site glazing will remain valid for a period of 3 months from date of completed manufacture of the Goods. Melbourne Safety Glass reserves the right to vary the charge after the lapse of 3 months, to the extent permitted by law.
3. The quoted price is based upon the particular specifications of the Goods current at the time of Quotation. Melbourne Safety Glass reserves the right to vary the price if there is any variation in specification after the Order is placed, to the extent permitted by law.
4. Notwithstanding any other clause of these terms and conditions of sale, if any supply by Melbourne Safety Glass 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 Melbourne Safety Glass. The additional amount:
 1. is equal to the price payable by the Customer for the relevant supply multiplied by the prevailing GST rate; and
 2. is payable at the same time and in the same manner as the price for the supply to which the additional amount relates.

Signed: _____ Date: _____

6. DELIVERY

1. 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.
2. 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. 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 Melbourne Safety Glass within 24 hours of delivery and confirmed in writing within 7 days of such report.
3. The Customer agrees to accept delivery of the Goods or to make alternative delivery arrangements within 7 days of Melbourne Safety Glass notifying the Customer that the Goods are available for delivery. To the extent permitted by law, Melbourne Safety Glass reserves the right at its absolute discretion to charge a minimum fee of \$50 plus 2% of order value per week or part thereof, if the Customer fails to accept or make alternative arrangements for delivery within 7 days of being advised that delivery is ready.
4. Where the parties have agreed that the Customer will advise Melbourne Safety Glass of a "load date" (being a date for delivery), the Customer must:
 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, as set out in the Standard Fulfillment Process); and
 2. ensure that the load date is not more than 90 days after the date of the Order.
5. To the extent permitted by law, the Customer shall be responsible to Melbourne Safety Glass for any extra costs (which term shall include actual costs and imputed costs for storage, handling or demurrage) incurred by Melbourne Safety Glass as a result of failure of the Customer to take delivery of the Goods at the time and place specified. Melbourne Safety Glass will be entitled to a lien over the Goods until such costs have been paid in full.
6. If the Customer is required to give Melbourne Safety Glass notice of a load date under clause 6.4, and fails to do so within within 90 days after placing the Order, Melbourne Safety Glass reserves the right to:
 1. review and vary the price payable by the Customer under the Quotation to the extent permitted by law, if Melbourne Safety Glass considers it reasonable to increase those prices to reflect Melbourne Safety Glass' then current prices for such Goods (or equivalent Goods), in which case the Customer must pay the difference on demand; and/or
 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. Melbourne Safety Glass must inform the Customer of such variations at the time of delivery of the Goods.
7. If the Customer fails to accept any part of the Goods which Melbourne Safety Glass has dispatched in conformity with the Contract and such part of the Goods is returned to Melbourne Safety Glass and re-dispatched subsequently, then Melbourne Safety Glass may, to the extent permitted by law, require the Customer to pay on demand a charge equal to double the current delivery charge.

7. TITLE

8. Property in the Goods supplied by Melbourne Safety Glass 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 Melbourne Safety Glass has been paid. The Customer in the meantime takes custody of the Goods as the fiduciary agent and bailee of Melbourne Safety Glass.
9. 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 Melbourne Safety Glass elects.

10. Until the Goods have been paid for in full:

1. the Customer must store the Goods in such a manner as to show clearly that they are the property of Melbourne Safety Glass;
2. the Customer may sell the Goods, in the ordinary course of its business, but only as fiduciary agent of Melbourne Safety Glass. Any right to bind Melbourne Safety Glass 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 Melbourne Safety Glass and must keep the proceeds in a separate bank account until the liability to Melbourne Safety Glass is discharged; and
3. 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.

11. The Customer irrevocably authorises Melbourne Safety Glass at any time, to enter any premises:

1. upon which the Goods are stored to enable Melbourne Safety Glass to:
 1. inspect the Goods; and/or
 2. if the Customer has breached these terms and conditions, reclaim possession of the Goods.
 3. upon which the Customer's records pertaining to the Goods are held to inspect and copy such records.

12. The provisions of this clause apply notwithstanding any arrangement between the parties under which Melbourne Safety Glass or a related body corporate grants the Customer credit.

8. GUARANTEE

1. Subject to sub-clauses 8.2, 8.3 and 8.4 and to the proper handling, installation and operation of the Goods in accordance with Melbourne Safety Glass's standard specifications and recommendations and upon payment in full for the Goods, Melbourne Safety Glass warrants that the Goods are free from faulty workmanship and/or operating failure for the period specified on Melbourne Safety Glass's guarantee certificate.
2. This warranty does not extend to any fault or failure arising from misuse or damage to the Goods by the Customer.
3. Where the Goods include doors (other than wardrobe doors), to the extent permitted by law, Melbourne Safety Glass will not be liable for a breach of warranty:
 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;
 2. unless exterior finishes have been applied to exterior doors and in light reflective colours;
 3. if the door(s) contain a warp less than five millimetres;
 4. if bleeding stains occur when painting timber and an oil based undercoat has not been used to cover and seal the stain; or
 5. if solid construction doors have not been hung with 3 x 100mm hinges.
4. Where the Goods include wardrobe doors, to the extent permitted by law, Melbourne Safety Glass will not be liable for a breach of warranty if the wardrobe door(s) contain a warp less than five millimetres.
4. Melbourne Safety Glass will not be responsible for additional charges of hanging, painting or other charges arising from the replacement of doors (including wardrobe doors).

9. WARRANTY

1. Subject to clause 8, the only conditions and warranties which are binding on Melbourne Safety Glass 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 Trade Practices Act 1974 and, if applicable, the Domestic Building Acts) and to the extent permitted by law, the liability, if any, of Melbourne Safety Glass arising from the breach of such conditions or warranties shall, at Melbourne Safety Glass's option, be limited to and completely discharged in the case of the Goods, either the replacement or the repair by Melbourne Safety Glass 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 Melbourne Safety Glass any Goods in respect of which a warranty claim is made. All other conditions and warranties whether expressed 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 Melbourne Safety Glass are hereby expressly excluded.

2. Subject to clause 9.1, Melbourne Safety Glass 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 or loss arising from any failure, breakdown, defect or deficiency in the Goods and/or the Services) even if due to the negligence of Melbourne Safety Glass arising out of or in connection with the Goods and/or the provision of the Services.

10. CANCELLATION AND DEFAULT

9. The Contract may be cancelled/ varied by the Customer only with the written consent of Melbourne Safety Glass. To the extent permitted by law, Melbourne Safety Glass 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 Melbourne Safety Glass to the date of cancellation/variation, including recompense for any commitments made by Melbourne Safety Glass in consequence of the Order and all other losses both actual and prospective, incurred as a result of such cancellation/variation.
10. Melbourne Safety Glass shall be entitled to suspend delivery of the Goods 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 Melbourne Safety Glass against the Customer prior thereto.
11. Upon termination of the Contract by Melbourne Safety Glass the security deposit (if any) shall be forfeited to Melbourne Safety Glass 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 Melbourne Safety Glass from the Customer as liquidated damages. Melbourne Safety Glass 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 Melbourne Safety Glass for the Customer's default.

11. PRIVACY

12. Melbourne Safety Glass collects the personal information of its Customers to enable it to provide a Quotation for its Goods and/or Services and to provide its Customers with the Goods and/or Services they request. Melbourne Safety Glass may disclose the personal information of its Customers to third parties (such as contractors) that assist it in providing its Goods and Services. Customers may gain access to any personal information held about them upon request. To find out more about Melbourne Safety Glass's commitment to the protection of privacy, Customers may ask for a copy of Melbourne Safety Glass's Privacy Policy.

2. Where Goods and/or Services are supplied to the Customer on credit the Customer irrevocably authorises Melbourne Safety Glass, its employees and agents to make such enquiries as it deems necessary to investigate the creditworthiness of the Customer including (without limitation) making enquiries from persons nominated as trade referees, the bankers of Melbourne Safety Glass or any other credit providers ("**Information Sources**") and the Customer authorises the Information Sources to disclose to Melbourne Safety Glass all information concerning the Customer which is within their possession and which is requested by Melbourne Safety Glass.

Signed: _____ Date: _____

12. NOTICES

13. 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.
14. If the Notice is sent or delivered in a manner provided by clause 12.1, it must be treated as given to and received by the party to which it is addressed:
 1. if sent by post, on the 2nd Business Day (at the address to which it is posted) after posting;
 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
 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.
15. Despite clause 12.2.2:
 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;
 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
 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.

13. MISCELLANEOUS

16. If any condition of a Customer's Order 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.
17. The only terms and conditions binding on Melbourne Safety Glass are those contained herein or otherwise agreed to in writing by Melbourne Safety Glass and those, if any, which are imposed and which cannot be excluded by law.
18. To the extent permitted by law, the parties submit to the exclusive jurisdiction of the Courts located in the capital city of the Jurisdiction. The dispute must be determined in accordance with the law and practice applicable in the court.
19. Unless otherwise stated in the Quotation, all glass shall be clear glass.
20. It is expressly agreed that any variations in colour or texture of any material used in the Goods shall not be a defect.
21. If scaffolding is required it shall be the responsibility of the Customer.
22. If 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.
23. 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.
24. For the avoidance of doubt, and without limiting the generality of clause 13.8, the price variation provisions in clauses 3.5, 5 and 6 do not apply to Contracts for the supply of Services in Victoria.