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TERMS and CONDITIONS of TRADE – September 2015

1. Definitions

In these terms of trade:

“Account” means the Customer’s account with the Supplier;

“Customer” means the person or entity signing a Credit Application Form or making an Order and any person acting with ostensible authority on behalf of the party named as the Customer;

“Goods” means goods supplied by the Supplier to the Customer at any time;

“Order” or “Orders” means any order or orders of the Customer to the Supplier to supply Goods and/or Services;

“Services” means services supplied by the Supplier to the Customer at any time;

“Order Confirmation” means a written confirmation by the Customer of the Order once a quotation has been issued.

“Terms” means these Terms and Conditions of Trade;

“Supplier” means CM Glass Limited and/or Chesham MasterGlass Limited.

2. Application

: Unless otherwise agreed in writing by the Supplier and the Customer, these Terms will apply to all Goods and Services supplied by the Supplier to the Customer.

3. Quotation

: Quotations are provisional only and all quotations, including measurements and installation costs, are subject to confirmation by a complete site measure and inspection once the Order is placed. Any variations to the quotation as a result of the full site measure and inspection will be advised to the Customer as soon as reasonably possible.

: Delivery costs are not included in any quotation unless specifically noted.

: Quotations are valid for two months from the date of issuance.

: The Supplier reserves the right to alter the quotation prior to the quotation being accepted by the Customer :

(i) Where the Customer requests variations to the supply of Goods and Services; and/or

(ii) Due to circumstances beyond the Supplier's control.

: The Supplier may require an Order Confirmation from the Customer before proceeding.

4. Taxes and Duties

: Unless expressly included in any quotation or Order, Goods and Services Tax and other taxes and duties assessed or levies in connection with the supply of the Goods and Services to the Customer are not included in the price and will be the responsibility of the Customer or, where the payment of such taxes or duties is the responsibility of the Supplier at law, the price will be increased by the amount of such taxes or duties.

5. Errors or Omissions

: Clerical errors or omissions, whether in computation or otherwise in the quotation, Order, Order Confirmation or invoice will be subject to correction by the Supplier.

6. Delivery

: Delivery of Goods is deemed to have occurred at the time the Customer takes possession at the Supplier’s premises, or where the Customer requires delivery, when delivered to site.

: The Customer is responsible for all delivery costs.

: Risk in the goods passes to the Customer at the point of delivery.

: The Supplier will endeavour to deliver the Order on the date specified in the Order, Quotation or Order Confirmation, as the case may be, and where there is no date specified, then within a reasonable time.

: If the Customer is not in a position to accept or take delivery of the Goods or accept provision of the Services as scheduled the Customer will be responsible for all reasonable additional costs incurred by the Supplier as a result.

: The Customer must notify the Supplier within five working days of delivery of any shortfall in Goods supplied.

7. Approvals

: The Supplier is not responsible for securing building consents, inspections or any documentation required by third parties for any Goods or Services supplied.

8. Samples, etc

: The Customer agrees and acknowledges that there may be variations, within industry standards, and between the samples and colour indications shown to the Customer, and the Goods supplied.

: The guarantees contained in the Consumer Guarantees Act 1993 in respect of samples and description of goods shall apply only to the extent provided for in that Act.

9. Damage

: The Supplier is not responsible for damage to or failure to maintain the Goods by the Customer or third parties once risk in the Goods has passed to the Customer in accordance with 6 above.

10. Suitability of Goods and Services

: The Customer must satisfy itself that the Goods and Services as ordered are fit and suitable for the purpose for which they are required. The Supplier makes no warranties or representations, and expressly negates any implied or expressed conditions that the Goods and Services will be suitable for a particular purpose or use for which the Customer may use them, other than where, and to the extent, required by the Consumer Guarantees Act 1993.

: The Customer accepts all risk and responsibility for consequences arising from the use of the Goods and Services whether singularly or in combination with other Goods and Services.

11. Consumer Legislation, Liability and Indemnity

: The guarantees contained in the Consumer Guarantees Act 1993 are excluded to the extent permitted in that Act where the Customer acquires the Goods and Services for the purpose of business in terms of that Act.

: The Sale of Goods Act 1908, the Fair Trading Act 1986, Consumer Guarantees Act 1993, and other statutes may imply warranties or conditions or impose obligations upon the Supplier which cannot by law (or which can only to a limited extent by law) be excluded or modified. In respect of any such implied warranties, conditions or terms imposed on the Supplier the Supplier’s liability will, where it is allowed, be excluded or if not able to be excluded only apply to the minimum extent required by the relevant statute.

: Notwithstanding anything else in these Terms, the Supplier will not be liable for any indirect or consequential loss, loss of profit, loss of bargain, loss of business opportunity or exemplary damages or losses whether suffered or incurred by the Customer or another person arising out of or flowing from any breach of contract, any pre-contractual misrepresentation, or other dispute arising out of these Terms, and whether actionable in contract, tort (including negligence) equity or otherwise. If the Supplier is found liable for any loss or damage (including that set out in this clause), the Supplier’s liability shall not exceed the amount set out below.

: The Supplier’s liability to the Customer will be limited to the price of the part of the Order supplied from which any such liability arose. In all cases, the total liability shall not exceed 10% of the total Order or quotation or Order Confirmation price, whichever was the last price provided by the Supplier to the Customer.

: The Customer shall indemnify the Supplier against all liabilities, costs (including full costs between solicitor and client), losses, claims, expenses and demands incurred by the Supplier arising out of or incidental to the Customer’s non-compliance with these Terms, and from any third party claims arising out of or incidental to the supply of the Goods and Services.

12. Safety

: The Customer undertakes to ensure that the Supplier can deliver the Goods safely on the site.

: If the Supplier directly employs or contracts the installer of the Goods, the Supplier reserves the right to refuse to install the Goods if a safe site, as determined by the Supplier, is not provided by the Customer.

13. Access for Installation and Provision of Services

: The Customer will provide at no cost to the Supplier, adequate access and all necessary facilities including but not limited to power, lighting, unloading, hoisting and lifting facilities, labour (but excluding such labour as the Supplier has agreed to provide), site preparation for the purposes of installation of the Goods and provision of Services and employee amenities which comply with all statutory requirements.

: If the Customer fails to supply adequate access, the Supplier may make a further charge to the Customer to cover the additional costs incurred arising from such failure as the Supplier considers reasonable.

: Upon the Supplier delivering the Goods the Customer will ensure adequate safe storage facilities are provided for protection against theft and damage of any Goods, equipment or other items belonging to the Supplier at no cost to the Supplier.

: Where installation or supply of the Goods or provision of the Services requires co-ordination with other trades the Customer will arrange for all such trades to co-ordinate delivery and acknowledges that delays may arise as a result.

: Delivery times will be extended to cover delays caused by strikes, lockouts, prohibitions, non-availability of materials or any circumstances beyond the Supplier’s control.

14. Health and Safety in Employment Act

: The Customer will be responsible for compliance with the Health and Safety in Employment Act 1992, and its successor legislation, in respect of the Customer’s site and will advise the Supplier prior to commencement of any work of any hazards.

15. Cancellation

: A Customer may cancel the Order prior to a quotation being provided, by notice in writing to the Supplier.

: A Customer may cancel the Order after acceptance of the quotation, or after providing an Order Confirmation where this has been required, by notice in writing to the Supplier. In this case the Supplier may charge the Customer a reasonable administration fee together with the full cost of the Goods or such parts of the Goods for which the Supplier is already committed to pay.

16. Payment

: Payment is to be made in cash (or by credit card at the Supplier’s discretion) at time of the Order, or the acceptance of the quotation, or at the time of Order Confirmation, as the case may be, unless the Customer has completed a Credit Application Form and the Supplier has consented to providing a credit Account to the Customer, in which case payment will be in accordance with 0. below.

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17. No Withholding/Retentions

: The Customer will not attempt to withhold payment or any part thereof by way of set off, counterclaim, retention or otherwise, including but not limited to instances of warranty claims which the Customer has made or intends to make.

: There shall be no retentions held by Customer unless specifically mentioned in an agreement between the Supplier and the Customer, and agreed to by the Supplier in writing accordingly.

18. Collection Costs and Expenses

: The Customer indemnifies the Supplier in respect of collection costs and legal fees and disbursements on a solicitor and own client basis as charged to the Supplier, resulting directly or indirectly from the Customer's failure to pay any amount on time in accordance with these Terms.

19. Credit Account

: The Supplier may carry out credit checks prior to consenting to providing a credit Account to a Customer.

: The Supplier may require personal guarantees to be provided by directors (or equivalent) of corporate Customers prior to consenting to provide a credit Account to a Customer.

: For the purposes of the Privacy Act 1993, the persons who have signed the Credit Application Form authorise any person or company to provide the Supplier with such information as the Supplier may reasonably require in response to the Supplier's credit enquiries.

: Where the Supplier has consented to provide a credit Account to the Customer the following payment terms apply:

- Deposit (amount to be advised by the Supplier at the time of Order or in the quotation or Order Confirmation as the case may be) to be paid upon ordering or acceptance of the quotation with the balance due before the 20th of the month following delivery of the Goods for trade accounts, and within 7 days of invoice for non-trade accounts.

- Accounts not paid within this time will incur late payment penalties, calculated daily at 15% per annum. Such interest will continue after and notwithstanding judgment and until any outstanding debt is paid in full.

20. Construction Contracts Act 2002.

: The Supplier reserves the right to invoke the Construction Contracts Act 2002 and all its provisions in respect of any supply pursuant to these Terms to which that Act may apply.

: Where the Supplier has invoked the Construction Contracts Act 2002, these Terms shall be read with all necessary modifications to enable the provisions of that Act to apply.

21. Default

: The following shall constitute defaults by the Customer:

- non payment of any amount on the date it is due for payment in accordance with these Terms;

- customer intimates that it will not pay any amount by its due date;

- the Goods are seized by a third party, or a third party intimates that it intends to seize the Goods;

- the Goods in possession of the Customer are materially damaged while any amount is still owing to the Supplier;

- the Customer is bankrupted or put into liquidation or administration, or a receiver is appointed to any of the Customer's assets;

- the Customer does not insure the Goods as required in 22. below, or such insurance lapses;

- a Court judgement is entered against the Customer and remains unsatisfied for seven days;

- any material adverse change in the financial position of the Customer.

: If the Customer is in default, or otherwise in breach of these Terms or any other agreement between the Supplier and the Customer, the Supplier may take any one or more of the following actions:

- cancel, by notice in writing to the Customer, any agreement that the Supplier has with the Customer;

- refuse to supply any Goods to the Customer which are the subject of an Order, quotation, or Order Confirmation, but have not yet been supplied;

- remove or repossess the Goods as set out in 22. below

- seek reimbursement from the Customer for any costs, and legal fees and disbursements on a solicitor and own client basis as charged to the Supplier, resulting directly or indirectly from the Customer's default or breach.

22. Ownership and Personal Property Securities Act

: The Supplier shall retain full ownership of all Goods supplied to the Customer until such time as the price of the Goods and any other amounts due by the Customer to the Supplier, have been paid in full.

: The Customer grants a security interest (as defined in the Personal Property Securities Act 1999) over the Goods and that security interest shall secure all moneys owing to the Supplier by the Customer whether now or in the future.

: The Customer hereby waives the Customer's right to receive a copy of the verification statement following registration of the security interest on the Personal Property Securities Register.

: Until such time as the Goods are paid for in full, the Customer will ensure that the Goods are comprehensively insured and will note the interests of the Supplier under any insurance policy for its respective rights and interests.

: The Supplier shall have the right to enter any property / premises where the Goods are situated or stored, at any reasonable time, and take possession of any of those Goods at any time default by the Customer or any breach of these Terms or any other agreement between the Supplier and the Customer by the Customer. If the Goods are stored at the premises of a third party the Customer will obtain the consent of such a third party and its mortgagee to the Supplier's entry onto the property/premises for this purpose.

: The Customer shall pay all costs incurred by the Supplier in respect of such entry and repossession and including all legal costs.

23. No Resale or Trade

: Until the Goods have been paid for in full, the Customer may not sell or trade the Goods without the prior written consent of the Supplier.

: In any case where the Customer sells or trades the Goods prior to payment in full to the Supplier, the Customer shall hold the entire proceeds of the sale or other dealing in respect of the Goods in trust for the Supplier in a separate account for the Supplier.

24. Waiting Time / Missed Appointments

: The Supplier reserves the right to charge a reasonable fee where the Customer misses an appointment and / or waiting on site to meet the Customer at a previously agreed time.

25. Force Majeure

: Neither the Supplier nor the Customer will be liable to the other for any breach of these Terms due to any event or circumstance beyond the reasonable control of the party in question. Such event or circumstance includes, but is not limited to, act of God, nature, war or government, any civil disturbance, or any labour disruption. Such event does not include an event that is constituted or caused by the insolvency of a party or lack of funds for any reason.

26. Validity

: If any provision of these Terms is invalid, void or illegal or unenforceable the validity existence, legality and enforceability of the remaining provisions will not be affected, prejudiced or impaired.

27. No Right to Order or Credit

: The Supplier may at any time refuse an Order by the Customer or decline to approve any credit application by the Customer for any reason whatsoever.

: The existence of an Account in the Customer name does not automatically entitle the Customer to credit in the future.

28. No Waiver

: Failure by either party to enforce any of the terms and conditions contained in these Terms will not be deemed to be a waiver of any of the rights or obligations that party has under these Terms.

29. Changes to Terms

: The Supplier may from time to time by written notice to the Customer amend, add to or repeal these Terms or any part of them, or may substitute new terms and conditions.

: Such amendment, addition or substitute terms and conditions will be binding on the Customer fourteen days after the date of delivery of the notice, unless the Customer otherwise notifies the Supplier in writing of the Customer's non-acceptance of the amendment, addition or substitution.

: In the event of such non-acceptance, the Customer may terminate any agreement with the Supplier by notice in writing to the Supplier. Such termination shall not affect any of the Supplier's rights or Customer's obligations under these Terms and any agreement between the Supplier and the Customer, including but not limited to the Customer's obligation to pay for Goods and Services ordered and /or provided.

30. Entire Agreement

: These Terms constitute the entire agreement and supersede and extinguish all prior agreements and understandings between the Supplier and the Customer.

31. Other Agreements

: If there is inconsistency between these Terms and any Order, quotation or Order Confirmation, as the case may be, or any other arrangement between the Supplier and Customer in respect of the subject matter of these Terms, these Terms prevail unless otherwise agreed in writing by the parties.

32. Disputes

: In the event of any dispute between the parties in relation to these Terms or any other matter the parties will first seek to resolve the dispute by promptly giving notice to the other party and in good faith endeavor to resolve the dispute.

: In the event of any dispute remains unresolved the parties will first refer the dispute to mediation for resolution.

: In the event that resolution by mediation is not achieved to the satisfaction of both parties within 30 days of referral to mediation, either party may then take legal action to resolve the dispute.

: Nothing in this clause prevents the Supplier from taking legal action to enforce payment of any debt due, or prevents either party from seeking interlocutory or injunctive relief.

33. Governing Law

: These Terms will be interpreted in accordance with and governed by the laws of New Zealand and the New Zealand Courts will have exclusive jurisdiction over any dispute in relation to the Goods and Services.