BLUEWATER GLASS AND BALUSTRADES PTY LTD TRADING AS

BLUEWATER GLASS AND BALUSTRADES

1. APPLICATION OF THESE TERMS AND CONDITIONS

The Customer agrees that prior to placing an order with the Contractor, the Customer has read and agreed to the terms and conditions as set out hereunder. For the purposes of this agreement;

"***the Contractor***" is Bluewater Glass and Balustrades Pty Ltd trading as Bluewater Glass and Balustrades its successors and assigns and any person acting on behalf of and with the authority of Bluewater Glass and Balustrades;

"***the Customer"*** is the person or business entity named on the Contractors quotation provided by the Contractor;

"Goods" means materials and products and associated components as more particularly described on the Contractor's quotes, tax invoices and other paperwork supplied to the Customer;

"Site" means the place where the Contractor's work will be delivered and or carried out; and

"Australian Consumer Law" means the Australian Consumer Law set out in schedule 2 of the Competition & Consumer Act 2010 (Cth) as amended from time to time.

2. QUOTES

2.1 Contractor Supply Quote

The Contractor shall give the Customer a quote specifying the work required to be done in order to fulfill the Customer's instructions and an estimate of the Contractor's charge for the performance of such work.

2.2 Acceptance by the Customer

2.2.1 Where the Contractor has given the Customer a quote the Contractor need not commence work until the quote has been accepted by the Customer and the required deposit has been received and cleared by the Contractor as set out in 9.2.

2.2.2 The Customer shall accept the quote by signing and returning a true copy of the quote and/or work authorisation form accompanied with a purchase order number (if applicable). A signed facsimile or scanned copy of the quote will be binding for the purposes of these terms and conditions.

2.2.3 Quotes are valid for thirty (30) days only, unless an extension has been authorised by the Contractor.

2.2.4 In acceptance of the quote, the Customer warrants that it has not relied on any representation by the Contractor other than as supplied in writing in the quote.

3. VARIATIONS

3.1 Variations to an accepted quote or contract, including, but not limited to changes of materials and or workmanship may incur additional costs to the Customer.

3.2 Variations within a period subject to a progress payment shall be payable at that time and no later.

4. CANCELLATION

The Customer shall reimburse the Contractor for any costs, expenses or losses incurred by the Contractor should the Customer cancel an accepted quote or work authorisation. The time for payment for such cancellation shall be seven (7) days from the Contractor's invoice.

5. PROLONGATION

Should work at the Site be held up for reasons beyond the Contractor's control, then the Customer shall indemnify the Contractor from any increased costs, losses or expenses due to such prolongation.

6. DELIVERY OF GOODS

6.1 Delivery of the Goods shall be made to the Customer's nominated address. The Customer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery. Delivery of Goods to a third party nominated by the Customer is deemed to be delivery to the Customer for the purpose of this agreement. The failure of the Contractor to deliver shall not entitle either party to treat this contract as repudiated. The Contractor shall not be liable for any loss or damage whatever due to the failure by the Contractor to deliver the Goods (or any part of them) promptly or at all.

6.2 The Customer shall indemnify the Contractor from any costs incurred should Site access not be available and subsequently the Contractor is unable to make delivery and or continue work.

7. SITE ACCESS

7.1 The Customer shall ensure that the Contractor has clear and uninterrupted access to the Site until the Work has been completed and the Contractor paid in full.

7.2 The Customer shall indemnify the Contractor from additional costs or penalties if the completion of the Work is delayed due to interrupted Site access.

8. RISK

The risk in the Goods shall pass to the Customer upon delivery and or installation of the Goods to the Customer or to a third party nominated by the Customer.

9. PAYMENT

9.1 Time for Payment

The Customer must, within the time specified in the Contractor's quote that of being 7 days from invoice, pay the Contractor the total amount set out within that invoice.

9.2 Deposit

The Contractor will require a 10% deposit from the Customer, the Customer acknowledges the Contractor is under no obligation to undertake any work as requested by the Customer until the deposit is received by the Contractor in full and when all details pertaining to contract are finalised. In the event of default as to payment owing to the Contractor on the part of the Customer, the Contractor shall be entitled to forfeit the deposit and claim any costs, profit or margin contemplated by or allowed for in the contract in addition to any remedy available to the Contractor at law or in equity.

9.3 Progress Payments

The Contractor may require progress payments from the Customer. When agreed if progress payments are not honoured by the Customer, the Contractor reserves the right to halt any further work until such time as the outstanding payment is forthcoming. In addition interest (as specified in 9.5) may be charged.

9.4 Building and Construction Industry Payments Act 1999 NSW

At the Contractor's sole discretion, if there are any disputes or claims for unpaid Goods or services, then the provisions of the Building and Construction Industry Payments Act 1999 NSW may apply.

9.5 Interest

The Contractor may charge interest at the rate of two percent (2%) above the commercial lending rate of the Contractor's bank or financial institution calculated on a daily basis on amounts not paid within the time specified in the agreed quote and/or work authorisation form.

9.6 GST

Unless otherwise stated, all amounts and prices provided in this quote or invoice otherwise are exclusive of GST. Where the service provided is subject to GST, it will be added and charged to the Customer.

9.7 Damages

The Customer must pay to the Contractor any costs, expenses or losses incurred by the Contractor as a result of the Customer's failure to pay to the Contractor all sums outstanding as owed by the Customer to the Contractor including without limiting the generality of the forgoing any debt collection and legal costs incurred in enforcing payment on a solicitor and own client basis.

9.8 Contractor's Indemnity
The Customer shall:

a) Ensure the Customer or its representative remains on the job site during the performance of the Contractor's work ;

b) sign off that the work has been completed by the Contractor in accordance with the quote or work authorisation form;

c) indemnify the Contractor from any claims or charges relating to damage and/or loss of property from the Site if the Customer has not complied with the conditions specified in 9.8 (a).

10. RETENTION OF TITLE

10.1 Title

Notwithstanding the delivery or installation of the Goods, title in any particular Goods shall remain with the Contractor until the Customer has paid and discharged any and all monies owing pursuant to any invoice issued by the Contractor for the Goods, including all applicable GST and other taxes, levies and duties. Where the Goods have been on sold by the Customer, the Customer will be taken to hold the proceeds of sale of such Goods upon trust for the Contractor and to account to the Contractor for these proceeds.

Any payment made by or on behalf of the Customer which is later avoided by the application of any Statutory Provisions shall be deemed not to discharge the Contractor's title in the Goods nor the Customer's indebtedness to the Contractor and, in such an event, the parties are to be restored to the rights which each respectively would have had if the payment had not been made.

10.2 Bailment

The Customer acknowledges that it is in possession of the Goods solely as Bailee until payment of all invoices for the Goods is made pursuant to clause 10.1 and until that time:

a) the Customer must not encumber or otherwise charge the Goods; and

b) the Customer shall be fully responsible for any loss or damage to the Goods whatsoever and howsoever caused following delivery or installation of the Goods to the Customer

10.3 Repossession

The Customer hereby irrevocably grants to the Contractor the right, at its sole discretion, to remove or repossess any Goods from the Customer and sell or dispose of them, and the Contractor shall not be liable to the Customer or any person claiming through the Customer and the Contractor shall be entitled to retain the proceeds of any Goods sold and apply same towards the Customer's indebtedness to the Contractor. If the Customer commits an act of bankruptcy, enters into any form of administration or liquidation, makes any composition or arrangement with its creditors, ceases to carry on business or breaches any fundamental clause of this agreement, then the Contractor may, without prejudice to any other remedies it may have, repossess any Goods delivered to the Customer on any account which has not been paid in accordance with the terms and conditions

herein and commence proceedings to recover the balance of any monies owing the Contractor by the Customer.

11. PERSONAL PROPERTY SECURITIES ACT 2009 ("PPSA")

11.1 In this clause, the following words have the respective meanings given to them in the PPSA: Financing Statement, Financing Change Statement, Proceeds, Register, Security Agreement, Security Interest and Verification Statement.

11.2 The Customer acknowledges and agrees:

a) that these Terms & Conditions constitute a Security Agreement that creates a Security Interest in all Goods (and Proceeds):

(i) previously supplied by the Contractor to the Customer;
(ii) to be supplied in the future by the Contractor to the Customer;

b) that the Security Interest created by these Terms & Conditions is a continuing Security Interest in all Goods (supplied now or in the future by the Contractor to the Customer) and Proceeds, which will operate (despite any intervening payment or settlement of account) until the Contractor has signed a release;

c) to waive its rights in relation to the sections listed in sub-section 115(1) of the PPSA (or as otherwise amended), which will not apply (to the extent, if any, mentioned) to the Security Agreement created by these Terms & Conditions.

11.3 The Customer undertakes to:

a) keep all Goods free of any charge, lien or Security Interest except as created under these Terms & Conditions and not otherwise deal with the Goods in a way that may prejudice any rights of the Contractor under these Terms & Conditions or the PPSA;

b) sign any further documents and provide any further information (which must be complete, accurate and up-to-date in all respects) that the Contractor may require to:

(i) register a Financing Statement or Financing Change Statement in relation to a Security Interest on the Register;
(ii) register any other document required to be registered by the PPSA; or
(iii) correct a defect in a statement referred to in clause 11.3(b) (i) or 11.3(b) (ii);

c) indemnify, and upon demand reimburse, the Contractor for all fees (including actual legal fees on a solicitor/own client basis), costs, disbursements and expenses in:

(i) registering and maintaining a Financing Statement or Financing Change Statement on the Register or releasing any Goods charged thereby; and
(ii) enforcing or attempting to enforce the Security Interest created by these Terms & Conditions.

d) not register, or allow to be registered, a Financing Statement or a Financing Change Statement in respect of the Goods or Proceeds in favour of a third party, without the prior written consent of the Contractor; and

e) immediately advise the Contractor of any material change in its business details (including, but not limited to, it's trading name, address, facsimile number) or business practices.

12. WARRANTY

12.1 The Contractor will provide the Customer with a life time warranty on the Contractors workman ship.

12.2 The Contractor reserves the right to make null and void the warranty should the Goods and workmanship be modified, altered, damaged or put to any undue stress other than in the way the Goods were designed to perform.

12.3 The Contractor shall not provide warranty on Goods and workmanship supplied by the Customer to be used in the Work by the Contractor.

12.4 In respect of all claims the Contractor shall not be liable to compensate the Customer for any delay in either replacing or repairing the workmanship/Goods or in properly assessing the Customer's claim.

13. LIABILITY

13.1 Non-excludable Rights

The parties acknowledge that, under the Australian Consumer Law, certain conditions and warranties may be implied in these Terms and Conditions and there are rights and remedies conferred on the Customer in relation to the provision of the goods which cannot be excluded, restricted or modified by the Agreement ("Non-excludable Rights").

13.2 Disclaimer of Liability

The Contractor disclaims all conditions and warranties expressed or implied, and all rights and remedies conferred on the Customer, by statute, the common law, equity, trade, custom or usage or otherwise and all those conditions and warranties and all those rights and remedies are excluded other than any Non-excludable Rights. To the extent permitted by law, the liability of the Contractor for a breach of a Non-Excludable Right is limited, at the Contractor's option, to the supplying of the Goods and/or any services again or payment of the cost of having the Goods and/or services supplied again.

13.3 Indirect Losses

Notwithstanding any other provision of these Terms and Conditions, the Contractor is in no circumstances (whatever the cause) liable in contract, tort including without limitation, negligence or breach of statutory duty or otherwise to compensate the Customer for:

a) any increased costs or expenses;
b) any loss of profit, revenue, business, contracts or anticipated savings;
c) any loss or expense resulting from a claim by a third party; or
d) any special, indirect or consequential loss or damage of any nature whatsoever caused by the Contractor's failure to complete or delay in delivering the Goods or completed the work.

13.4 Force Majeure
The Contractor will have no liability to the Customer in relation to any loss, damage or expense caused by the Contractor's failure to deliver the Goods or complete the work as a result of fire, flood, tempest, earthquake, riot, civil disturbance, theft, crime, strike, lockout, breakdown, war, the inability of the Contractor's normal suppliers to supply necessary material or any other matter beyond the Contractor's control.

14. PRIVACY

14.1 The Customer hereby authorises the Contractor to collect, retain, record, use and disclose consumer and/or commercial information about the Customer, in accordance with the Privacy Act 1988 (Cth) and subsequent amendments, to persons and/or legal entities who are a solicitor or any other professional consultant engaged by the Contractor, a debt collector, credit reporting agency and/or any other individual or organisation which maintains credit references and/or default listings.

14.2 The Contractor may give information about the Customer to a credit reporting agency for the purposes of obtaining consumer and commercial credit reports and/or lodging consumer and commercial defaults on the Customer's credit file. This information may be given before, during or after the provision of credit to the Customer and will be in accordance with the Privacy Act 1988 (Cth) and subsequent amendments.

15. SECURITY & CHARGE

The Customer hereby charges all property both equitable and legal, present or future of the Customer in respect of any monies that may be owing by the Customer to the Contractor under the terms and conditions or otherwise and hereby authorises the Contractor or its solicitors to execute any consent form as its attorney for the purpose of registering a caveat over any real property owned by the Customer at any time.

16. DISPUTE RESOLUTION

Without prejudice to either party's rights under the *Building and Construction Industry Payments Act* 2004 (NSW) and the, Contractors Debts Act 1997 (NSW) either party may refer any dispute under, or arising out of, this contract to the Institute of Arbitrators & Mediators Australia, for resolution under the Rules of the Construction Industry Dispute Resolution Scheme. Each case will first be referred to a Conciliator appointed by the Institute unless each party wishes to proceed directly to arbitration. If the conciliation is not satisfactorily concluded within six weeks or if the parties want to proceed directly to arbitration, the Institute will appoint an Arbitrator who will make a final and binding award.

17. GENERAL MATTERS

17.1 No Waiver

A power or right is not waived solely because the party entitled to exercise that power or right does not do so. A single exercise of a power or right will not preclude any other or further exercise of that power or right or of any other power or right. A power or right may only be waived in writing, signed by the party to be bound by the waiver.

17.2 Severability

Any provision in these Terms and Conditions which is invalid or unenforceable in any jurisdiction must be read down for the purposes of that jurisdiction, if possible, so as to be valid and enforceable. If that provision cannot be read down then it is capable of being severed to the extent of the invalidity or unenforceability without affecting the remaining provisions of these Terms and Conditions or affecting the validity or enforceability of that provision in any other jurisdiction.

17.3 Governing Law and Jurisdiction

These terms and conditions are governed by the laws of the State of New South Wales and the Commonwealth of Australia and each party hereby irrevocably submits to the non-exclusive jurisdiction of the Courts of New South Wales and the Commonwealth of Australia.