

CWD Custom Windows Terms and Conditions

1. Definitions and Interpretations

“Australian Consumer Law” means Schedules 1 and 2 of the Competition and Consumer Act 2010 and any other relevant provisions contained in that Act.

“AS1170.2-2011-part 2” means the Australian Standard for structural design actions – wind actions as amended from time to time.

“AS2047-2014” means the Australian Standard for windows in buildings – selection and installation as amended from time to time.

“AS1288-2006” means the Australian Standard for glass in buildings – selection and installation as amended from time to time.

“AS4055-2012” means the Australian Standard for wind loadings in housing as amended from time to time.

“Client” means the customer names on the quotation, and if no customer is named, the customer to whom the Goods and Work is supplied.

“Company” means CWD Custom Windows (ABN 36 131 077 793)

“Conditions” means these conditions of quotation and any additional matters prescribed on the face of this quotation.

“Consequential Loss” means loss of revenue, loss of profits, loss of anticipated savings or business, loss of value of equipment (other than cost of repair), loss of opportunity or expectation loss and any form of consequential, special, indirect, punitive, or exemplary loss or damages, however it arises (including as a result of negligence).

“Goods and Work” means the materials and services supplied or to be supplied as described on the face of this quotation.

“includes” or “including” means includes or including without limitation.

“Intellectual Property” means all registered and unregistered rights in relation to present the future copyright, trademarks, designs, know-how, patents, confidential information, moral rights, and other intellectual property as defined in article 2 of the Convention establishing the World Intellectual Property Organisation 1967.

“Loss” means any liability however it arises (including as a result of negligence) and includes any loss, claim, damage, demand, injury or death and a fine or penalty imposed by a statutory or other authority.

“Rates” means the unit rate shown on the face of this quotation, or otherwise used to calculate the prices in the quotation.

“Site” means the location for the supply/performance of the Goods and Work specified on the face of this quotation.

2. Agreement

Except to the extent otherwise explicitly agreed in writing between the parties, these conditions (and if applicable, the CWD credit application completed by the Client (and together with any credit guarantees)) govern the entire relationship between the Company and the Client in connection with the Goods and Work and will prevail over any other document (including purchase order terms or procurement terms provided by the Client to the extent inconsistent with the conditions) from time to time. To the extent of any inconsistency between the credit application, credit guarantees and these Conditions, these Conditions will prevail. The Client acknowledges that it has not relied on any representation, inducement, warranty or promise which is not set out below. These conditions may only be varied by both parties agreement in writing.

3. Validity

This quotation is an offer open to acceptance by the Client within 30 days from the supply date on the quotation and any such acceptance must be on the basis that supply/performance of the Goods and Work is started with 3 months of the date of quotation. The offer is made subject to the Client meeting CWD credit approval requirements. The Client's written order to commence the supply/performance of the Goods and Work or such commencement by the Company constitutes acceptance of the offer. The initial supply of quotation/estimate from the Company to the Client shall be at the cost of the company, any further request for supply of quotation or quotation revision will be subject to a chargeable Rate set by the Company, at the discretion of the Company.

4. Point of Supply

This quotation is based on all materials being available from the Company's point of supply with respect to the locations of the supply/performance of the Goods and Work (as determined by the Company) or as otherwise specified in these Conditions. Should conditions beyond control of the Company necessitate supply from any other point of supply any resultant increase in cost will be paid by the Client.

5. Extent of Goods and Work

This quotation is based on the supply/performance of all the Goods and Work at the Site. Should the quantities supplied or the location of the Site vary from the quotation the Company reserves the right to adjust the Rates. Unless otherwise stated in the quotation, glass, glazing, and glazed units are supplied on a supply only basis and responsibility for glass and glazing ceases upon delivery. Where glazing of the Goods and/or installation of sashes and door panels is required at the Site, the Company recommends its personnel perform the work and does not accept any liability where the Client has performed such work.

6. Product Appearance

The Client acknowledges and agrees that the Goods and Work may vary as to appearance including colour, finish and other characteristics, and subject to clause 11, the Company expressly disclaims any liability with respect to such variations.

7. Handling and Storage of Goods

The Company is not responsible for any damage caused to the Goods resulting in failure by the Client to keep the Goods dry and fully protected by the weather, including exposing the goods to excessive heat, moisture or humidity. Final cleaning of the Goods is the responsibility of the Client.

8. Product Installation

The Client is responsible for installation of the Goods, unless otherwise stated on the face of the quotation. The Company is not responsible in any way for any claims resulting from the installation of the Goods by the Client. The Client must ensure the Goods are installed in accordance with the wind loading requirements of AS4055-2012 or AS1170.2-2011-part 2 applicable to the site and the Australian Window Association Installation Guide found at <https://www.awa.org.au/documents/item/212>. The Goods must not be installed in a continuously damp or moist environment. Where the company is responsible for the installation of the Goods, then the following terms and conditions apply:

- (a) It is the clients responsibility to that at all times during the installation:
 - (i) Openings have been prepared, including (if required) waterproofing the surfaces where the aluminium framing or sills would be in contact with the earth, cement and lime products, stone, brick or timber and are fit for purpose;
 - (ii) The framing is plumb, level, and square;
 - (iii) All other trades have completed preparatory works to ensure installation can be completed in a safe and effective manner;
 - (iv) Any necessary scaffolding is provided; and
 - (v) Where the goods are required to be installed above ground floor level, the client has hoisted the Goods safely to that level.
- (b) The client will indemnify the Company for all Loss (including but not limited to delay costs, establishment costs and outlays) incurred by the Company as a result of the Client not complying with its responsibilities under this clause.
- (c) Wheelchair access sills are not water rated and do not meet the requirements of Australian Standard AS2047 for water resistance performance. It is the Clients responsibility to ensure the conditions of supply of wheelchair access sills have been met. Wheelchair access sill is intended for special applications only where either:
 - (i) The door is being used internally or
 - (ii) Where the building designer has provided adequate protection to ensure the door will perform.

9. Basis of Payment

The Goods and Work will be paid for by the Client at the Rates according to the actual quantities supplied stated in the quotation. The client acknowledges that the Goods will be paid for in full without any retention or set-off and the Company is not obliged to accept any products ordered in excess of the Clients requirements (and supplied as part of the Goods and Work) for return or credit.

10. Limitation of Liability and Indemnity

If the Client is not a Consumer, the Company shall not be liable in any circumstances:

- (a) To any damage to any property of whatsoever kind situated in, on or adjacent to the Site resulting from the Goods and Work supplied or performed in accordance with these Conditions;
- (b) For any defects in the Goods and Work (excepting apparent damage or discrepancies which are subject to clause 13) unless the Client notifies the Company of that defect within the earlier of 14 days of the date of delivery of materials (or if relevant, the supply of services) or prior incorporation of materials into any construction by or on behalf of the Client which notice shall be a condition precedent to any right to recover by the Client.
- (c) Any Loss arising from delay;
- (d) For any Consequential Loss
- (e) For any Loss arising from materials supplied by the Company being place or installed by others, and, subject to clause 11, the Company's total aggregate liability in all circumstances is limited (to the extent permitted by law) to the amount paid by the Client for Goods and Work.

To the maximum extent permitted by law, the client hereby indemnifies and forever holds harmless the Company from all Losses caused or contributed to by any neglect and/or wilful act or omission or any breach of these Conditions by the Client; or by the Company arising from the supplying or the performing the Goods and Works in accordance with these conditions.

11. Limitation of Liability under Australian Consumer Law Guarantees

Unless the Client indicates otherwise below, the Client acknowledges that the Goods and Work it will acquire from the Company will be obtained for either the re-supply (in altered form or condition or to be incorporated into other goods) or for the purpose of using them up or transforming them in trade or commerce in the course of a process of production or manufacture or in the course of repairing or treating other goods or fixtures on land.

By ticking this box, the Client notifies the Company that it is acquiring the Goods for a purpose other than that is stated immediately above, in which event the conditions below may apply.



If the Client is a Consumer and any of the Work services supplied by the Company are not services of a kind ordinarily acquired for personal, domestic or household use or consumption, the Client agrees that the Company's liability for a failure to comply with a consumer guarantee under the Australian Consumer Law in relation to those Goods (other than a guarantee under sections 51(title), 52 (undisturbed possession) and 53 (undisclosed securities)) of the Australian Consumer Law, is limited to, at the option of the Company, one or more of the following:

- (a) The replacement of the Goods or the supply of equivalent goods;
- (b) Repair of the Goods;
- (c) The payment of the cost of replacing the Goods or of acquiring equivalent goods; or
- (d) The payment of the cost of having the Goods repaired.

If the Client is a Consumer and any of the Work services supplied by the Company are not services of a kind ordinarily acquired for personal, domestic or household use or consumption, the Company's liability for a failure to comply with a consume guarantee under the Australian Consumer Law in relation to those Work services is limited to, at the option of the Company:

- (e) The supply of the Work services again; or
- (f) The payment of the cost of having the Work services supplied again.

12. Site Access

The Company will deliver and the Client will receive the Goods and Work at the kerb alignment in a timely manner. The Client will be responsible for providing adequate, and timely access to the Site for the Company's material, personnel and equipment and the Client will indemnify the Company for all Loss (including delay and establishment costs) incurred by the Company as a result of the failure to provide such access. If the Company or its agents enter the Site for the purposes of delivering the Goods, the Client shall indemnify the Company for any Loss incurred by the Company arising out of or in connection with such entry upon the Site. Where the Company leaves equipment on Site in connection with the supply/performance of the Goods and Works, the Client shall take all reasonable precautions to secure the Site to prevent loss or damage to the equipment or any injury to persons entering upon the Site.

13. Delivery

The Company will use reasonable endeavours to supply/execute Goods and Work in accordance with the Client's schedule. Any period or date for delivery stated by the Company is intended as an estimate only and is not a contractual commitment. The Company will not be

liable for any loss (including consequential loss) or damage suffered by the Client or any other person arising out of a failure to meet an estimated delivery date. Prior to unloading from the delivery vehicle, or loading in the event that the Client collects the Goods and Work from the Company's premises, the Client (or any third party identified by the Client to receive (or if applicable, collect) the Goods and Work) shall check that the Goods and Work description and quantity on the delivery docket conforms with its requirements, and the Client (or the relevant third party on the Client's behalf) must record any discrepancies (including any damage and/or discrepancies in quality or specification) in writing on the delivery docket. Failure to make such notations on the copy of the docket retained by the Company is deemed to be conclusive evidence that the docket is accurate and that the Client accepts the Goods and Work. If the Company (in its absolute discretion) delivers Goods to an unattended Site, the Client must notify the Company of any discrepancies (including any damage to the Goods and Work) within 24 hours of such delivery and failure to give such notice will be conclusive evidence that the Client accepts the Goods and Work.

14. Site Visits and Hours

Unless otherwise stated on the face of this quotation, this quotation is based on:

- (a) The whole of work being available for completion at one Site visit; and
- (b) The whole of the supply/performance of the Goods and Work being conducted during normal hours (normal hours being 6am to 5pm Monday to Friday, excluding public holidays). Should it be necessary to supply/perform the Goods and Works outside normal hours then additional charges will apply which will be calculated in accordance with clause 15.

15. Variations and Cancellations

The Company is not obliged to carry out any variation which is outside the scope of Goods and Works. Any variation that the Company does carry out shall be subject to these Conditions and shall be charged to and paid for by the Client at an agreed rate or, failing agreement, at the rate determined by the Company. The Client is not entitled to cancel any order (whether in full or in part) without the written consent of the Company. Any cancellation is subject to a cancellation fee.

16. Terms and Payment

Supply Only – In the absence of an approved Company credit account the Client will be invoiced for 30% of the total contract sum prior to the ordering of any material. The Client will then be invoiced the remaining contract sum, to be paid in full, prior to delivery.

Supply and Install – In the absence of an approved Company credit account the Client will be invoiced for 20% of the total contract sum prior to the ordering of any material, then a further 50% prior to the arrival of Goods and Work to the Site, with the remaining 30% of contract sum to be invoiced and paid in full upon the completion of the Company's scope of works.

17. Force Majeure

The Company shall not be liable in any way for any delay in the supply/performance of Goods and Works where such delay occurs by reason of any cause whatsoever beyond the reasonable control of the Company, including without limiting the generality thereof, restrictions of Government or other statutory authorities, wars, fires, epidemics, failure or fluctuation in any electrical power supply, storm, flood, earthquake, accident, labour dispute, plant breakdown, materials or labour shortage, the change or introduction of any law or regulation or an act or omission of any supplier or other third party or any failure of any equipment owned or operated by them.

18. Information and IP

(a) The Client acknowledges and agrees that:

- (i) The Client must provide all relevant information (including all specifications, details of fly screens, cover plates, hardware and trims relating to the Goods and Works, details relating to the Site, and other matters that may affect the Company's ability to complete the Goods and Works) to the Company to enable the Company to supply/perform the Goods and Works; and
- (ii) The Company in giving this quotation has relied upon the accuracy and completeness of such information, and the Client hereby warrants to the Company the accuracy and completeness of all the information supplied.

(b) At the time of requesting the quotation, the Client must nominate the window rating appropriate to the location of the building and the height and position of the windows in the building in accordance with the then current AS1170.2-2011 part 2, and AS4055-2012, and must expressly identify whether the Goods will be installed in an environment classified as marine, coastal or industrial under AS2047-2014.

(c) If the Company has provided the Client with any information (including any design services or other advice) in connection with the Goods and Works, the Client acknowledges that it has formed its own opinions as to the correctness or otherwise of the information and has not and will not rely on the Company in respect of such information.

(d) All Intellectual Property of the Company, including any developed during the course of supply/performance of the Goods and Work, shall remain the sole property of the Company and no licence, right or other interest of any kind in respect of such Intellectual Property is granted, created or transferred to the client.

19. Risk

(a) Upon delivery of any Goods and Work to the Site or any temporary stockpiles, all risk in relation to such shall pass to the Client. Where Goods or Work are collected from the Company by or on behalf of the Client, risk passes to the Client when the material is loaded on the Client's (or the relevant third party on the Client's behalf) vehicle. Property in the Goods and Work shall not pass to the Client until the Company has been paid in full.

(b) Until property so passes, the Client holds the Goods and Work as Bailee for the Company; shall store them separately in a manner which clearly identifies them as the Company's goods; shall maintain the state/condition in which they are received; and is under an obligation to account to the Company for the proceeds of the sale of any Goods and Work. Nothing in these Conditions shall prevent the Company from taking action to recover the sale price of the Goods and Work.

20. Right to Repossess/Terminate

The Company may, without prejudice to any of its rights and without notice, immediately terminate its engagement under these Conditions and/or retake goods which remain its property and may for that purpose by its servants and agents enter the Client's premises or any other place where the goods may be if the Client:

- (a) Commences to be wound up or placed under official management or a receiver is appointed or takes possession of its undertaking or any part of its property;
- (b) Becomes insolvent, bankrupt, or commits an act of bankruptcy or makes an assignment for the benefit of a creditor;
- (c) Fails to pay any amounts with respect to the Goods and Work when those amounts are due and payable; or
- (d) Is in breach of these Conditions.

21. Safety

(a) The Client is responsible for ensuring the safe and adequate access to the Site for delivery and all other aspects of Site safety.

(b) The Client shall notify the Company prior to delivery, of any obstacles or peculiarities in relation to the Site including whether the Site or its approach had a gradient greater than 8 degrees or surfaces which are non-trafficable.

(c) The driver making any delivery may refuse to complete the delivery, if not satisfied with the Client's compliance with (a) and (b) above, however, making a delivery shall not constitute an assessment of the safety of the Site and in no way relieves the Client of its obligations under these Conditions, including those related to safety.

(d) If the Client is responsible for collecting the Goods and Work from the Company's premises, the Client is responsible for ensuring that it (and its representatives and agents) comply with all applicable laws, site policies, site procedures and all reasonable directions given by or on behalf of the Company whilst on or in the vicinity of the Company's premises.

(e) The Client acknowledges that it has appraised itself of the risks in relation to the supply/performance of the Goods and Work, and that it will implement the appropriate safety precautions and training of its personnel. Contact the Company for more information and a Material Safety Data Sheet.

22. General

(Severance) Any provision of these Conditions which is unenforceable or partly unenforceable is, where possible, to be read down so as to be enforceable, and if it cannot be read down, severed to the extent necessary to make these Conditions enforceable, unless this would materially change the intended effect of these Conditions.

(Waiver) A right may only be waived in writing, signed by the party giving the waiver, and no other conduct of a party (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right.

(No implied terms) The Client may have the benefit of certain statutory guarantees relating to the Goods and Work services pursuant to the Competition and Consumer Act 2010. Otherwise, to the maximum extent permitted by law, all terms, conditions or warranties that would be implied into these Conditions or in connection with the supply of the Goods and Work by law, statute, custom or international convention (including those relating to quality or fitness for purpose) are excluded.

(Insurance) The Client must take out and maintain those policies of insurance that would be held by a reasonably prudent customer in the position of the Client.

(No adverse interpretation) These Conditions are not to be interpreted against the interests of a party merely because that party proposed this document or some provision in it or because that party relies on the provision of these Conditions to protect itself.