

COMMERCIAL TERMS & CONDITIONS OF TRADE

1. DEFINITIONS

- 1.1 "Agreement" means these Terms and Conditions of Trade and includes any quote, order form, invoice or other documentation in respect of a supply of Products and Services
- 1.2 "Viridian" means Viridian Glass limited Partnership, Viridian Glass GP Limited acting as its general partner, Euroglass Systems, Euroglass, Norm Fowke Glass and includes any agents or employees of any of these entities or divisions.
- 1.3 "Customer" means the party purchasing Products and Services from Viridian as described in the quote, order form or any other document which forms part of this Agreement.
- 1.4 "Products" means all products supplied or to be supplied by Viridian to the Customer and includes:
- (a) all products of the general description specified on the front of this Agreement and supplied by Viridian to the Customer; and
 - (b) all products of the general description specified in a quote, order form or other documentation attached to this Agreement supplied by Viridian to the Customer, such quote, order form or other documentation deemed to be incorporated into and form part of this Agreement; and
 - (c) all inventory of the Customer that is supplied by Viridian; and
 - (d) all products supplied by Viridian and further identified in any invoice issued by Viridian to the Customer, which invoices are deemed to be incorporated into and form part of this Agreement; and
 - (e) all Products that are marked as having been supplied by Viridian or that are stored by the Customer in a manner that enables them to be identified as having been supplied by Viridian; and
 - (f) all of the Customers present and offer acquired products that Viridian has performed work on or to or in which goods or materials supplied or financed by Viridian have been attached or incorporated.

The above descriptions may overlap but each is independent of and does not limit the others.

- 1.5 "Products and Services" means all Products, goods, services and advice provided by or to be provided by Viridian to the Customer and shall include without limitation the design, manufacture, development, sale, installation and repair of glass, the supply of glass hardware and tools and all charges for labour, hire charges, insurance charges, or any fee or charge associated with the supply of Products and Services by Viridian to the Customer.
- 1.6 "Price" means the cost of the Products and Services as agreed between Viridian and the Customer and recorded in a quote, order form or other document between Viridian and the Customer and includes all disbursements or charges Viridian pay to others on the Customers behalf subject to clause 4 of this contract.
- 1.7 "Special Order" means an order of Products and Services which Viridian notifies to the Customer is a special order and includes, without limitation, an order of Products which Viridian does not stock.

2. ACCEPTANCE

- 2.1 By accepting a quote, placing an order or otherwise instructing Viridian to supply Products and Services, the Customer accepts the terms and conditions contained in this Agreement and acknowledges that a binding agreement for the supply of Products and Services is formed.
- 2.2 The Customer agrees that these terms and conditions apply to the exclusion of any and all other terms of purchase or similar document provided by the Customer or which the Customer seeks to apply to the supply of Products and Services, notwithstanding that any such other terms of purchase provide otherwise.

3. COLLECTION AND USE OF INFORMATION

- 3.1 The Customer authorises Viridian to collect, retain and use any personal information about the Customer, for the purpose of assessing any application made to Viridian by the Customer, assessing the Customer's credit worthiness, enforcing any rights

under this Agreement, or to enable Viridian to market any products and services provided by Viridian.

- 3.2 Where the Customer has expressly authorised Viridian in the quote, sales order or other document forming part of this Agreement, Viridian may also use any personal information about the Customer for sending the Customer electronic marketing and promotional materials.
- 3.3 The Customer authorises Viridian to disclose any personal information of the Customer to any person for the purposes set out in clause 3.1.
- 3.4 Where the Customer is a natural person the authorities under clauses 3.1, 3.2 and 3.3 are authorities or consents for the purposes of the Privacy Act 1993 and the Unsolicited Electronic Messages Act 2007.

4. PRICE

- 4.1 Where no price is stated in writing or agreed to orally, the Products and Services shall be deemed to be sold at the current amount as such Products and Services are sold by Viridian at the time of the Agreement.
- 4.2 The price may be increased by the amount of any reasonable increase in the cost of supply of the Products and Services that is beyond the control of Viridian between the date of the Agreement and delivery of the Products and Services.

5. PAYMENT

- 5.1 Payment for Products and Services shall be made in full on or before the 20th day of the month following the date of the invoice or other such timing as specified on the relevant invoice or terms of the Customer's credit account ("the due date").
- 5.2 Interest may be charged on any amount owing after the due date at the rate of 2.5% per month or part month.
- 5.3 If payment is not made by the due date, any expenses, disbursements and legal costs incurred by Viridian in the enforcement of any rights contained in this Agreement shall be paid by the Customer, including any reasonable solicitor's fees or debt collection agency fees.
- 5.4 Receipt of a cheque, bill of exchange, or other negotiable instrument shall not constitute payment until such negotiable instrument is paid in full.
- 5.5 Where a deposit is required, this shall be paid by the Customer at the time the Customer accepts a quote, places an order or otherwise instructs Viridian to supply the Customer with Products and Services.
- 5.6 It is Viridian policy to reject all claims for retentions. The only circumstances where retentions are accepted by Viridian is where this is agreed to and signed by both parties.
- 5.7 In the event of any dispute, the undisputed portion of the account shall be payable on the due date without any deduction by way of set off, counterclaim or other legal or equitable claim unless Viridian has agreed otherwise in writing.
- 5.8 Where the Customer has a credit account with Viridian, if at any time Viridian reasonably deems the credit of the Customer to be unsatisfactory, it may require the Customer to provide, at the Customer's cost, security for payment and/or Viridian may suspend performance of any of its obligations until security is provided to Viridian's satisfaction and may require the Customer to pay an the costs incurred as a result of suspension and recommencement of supply.
- 5.9 Where manufacture, delivery or installation of the Products and Services is delayed because of any act, omission, default or request of the Customer, Viridian may, without prejudice to any other rights it may have under the Agreement, require the Customer to pay that portion of the Price which represents the costs already incurred in carrying out the work required under the Agreement, in addition to any costs incurred by Viridian as a result of the delay.

6. QUOTATION

- 6.1 Where a quotation is given by Viridian for Products and Services:
- (a) unless otherwise agreed, the quotation shall be valid for thirty (30) days from the date of issue;
 - (b) The quotation shall be exclusive of goods and services tax unless specifically stated to the contrary;

- (c) Viridian reserves the right to alter the quotation because of circumstances beyond its control before acceptance by the Customer; and
- (d) Viridian may withdraw any quotation before acceptance.
- 6.2 Where Products and Services are required in addition to the quotation the Customer agrees to pay for the additional cost of such Products and Services.
- 6.3 Quotations are based on current costs of Viridian and any subsequent increase in these costs for any reason shall be paid by the Customer at the price relevant to the date of sale.
- 6.4 Unless otherwise stated, quotations do not include installation and maintenance costs, taxes, import duties or any other levies, tariffs, freight or insurance.
- 6.5 Quotations issued from sketches, plans, schedules or specifications provided by the Customer are subject to the accuracy of the information provided. Following acceptance of such a quote by a Customer, Viridian will not be held liable for inaccuracies in relation to quantity, dimension, material or position of Products and Services actually required or used that exceed the Products and Services in the quotation. Any extra Products and Services beyond that specified in a quote, or any reduction, will need to be requoted. In the event of a price not being agreed upon to accommodate these variations the price payable shall be the normal rates of such additional Products and Services in force by Viridian at the time of the performance of the work.
- 7. SUPPLY OF PRODUCTS AND SERVICES**
- 7.1 The Customer acknowledges that before agreeing to purchase any Products and Services from Viridian, the Customer expressly represents and warrants that it is not insolvent and has not committed any act of bankruptcy or knows of any circumstances which would entitle any secured creditor to appoint a receiver or liquidator or exercise any other rights over or against the Customer's assets.
- 7.2 Any Customer variations to an order must be agreed in writing by Viridian. Variations of an order may incur price increases which Viridian will notify to the Customer and will become effective once the Customer has agreed in writing.
- 7.3 Where the Customer cancels an order, the Customer shall be liable to pay Viridian upon demand, the value of all work done and materials used prior to the date of cancellation.
- 7.4 Any freight incurred in the delivery of the Products and Services shall be payable by the Customer.
- 7.5 Pending payment, the Customer shall be bailee of Viridian's Products and Services, shall exercise reasonable care in preserving the Products and Services against loss, damage, and destruction and shall keep the Products and Services separate and readily identifiable while the Products and Services are in the possession or control of the Customer.
- 7.6 Viridian's delivery obligations shall be satisfied by making the Products and Services available for collection at Viridian's premises unless otherwise agreed by Viridian in writing.
- 7.7 Viridian shall use its best endeavours to meet the required delivery or installation date but will not be responsible for any loss or damage (in either case, or any kind and whether direct, indirect, or consequential) arising from any delay or fault in the delivery of the Products and Services for any reason whatsoever, including but not limited to strikes, accidents, negligence, Civil commotion, epidemics, floods, extreme weather conditions, delays in obtaining materials, delays caused by other parties and acts of God. The Customer acknowledges that there is a greater likelihood of delay in the delivery of Special Order Products and Services. Any delay in delivery shall not invalidate the Agreement or subject Viridian to any penalty whatsoever.
- 7.8 Where the Agreement requires Viridian to deliver the Products and Services, the Customer shall give Viridian reasonable notice of the dates, time and quantities for delivery, and shall provide all-weather access to suitable delivery areas. Provided Viridian acts with reasonable care and skill in making the delivery, the Customer shall indemnify Viridian against all costs, claims, damages and expenses incurred in making delivery to the Customer's delivery area, including (without limitation), costs of cleaning, repairing damage to the site or any unloading equipment and returning any of Viridian's vehicles to the road.
- 7.9 The Customer shall inspect the Products and Services immediately upon delivery, and carry out any tests that a prudent Customer would carry out.
- 8. RETURNS**
- 8.1 To the extent permitted by law, all Products and Services procured in a Special Order are:
- (a) nonreturnable; and
- (b) supplied by Viridian subject to the Customer hereby acknowledging and agreeing that all risk of loss, shortage, damage, poor quality, deterioration or lack of fitness for purpose shall be borne by the Customer.
- 8.2 The Customer acknowledges and agrees that all Products and Services are custom built to order and to the maximum extent permitted by law are nonreturnable.
- 9. AGENCY**
- 9.1 The Customer authorises Viridian to contract either as principal or agent for the provision of Products and Services that are the matter of this Agreement.
- 9.2 Where Viridian enters into a contract of the type referred to in clause 9.1 it shall be read with and form part of this Agreement and the Customer agrees to pay any amounts due under that contract.
- 10. TITLE AND SECURITY (PERSONAL PROPERTY SECURITIES ACT 1999)**
- 10.1 Title in any Products and Services supplied by Viridian passes to the Customer only when the Customer has made payment in full for the Products and Services provided by Viridian and of all other sums due to Viridian by the Customer on any account whatsoever. Until all sums due to Viridian by the Customer have been paid in full:
- (a) Viridian has a security interest in all Products and Services;
- (b) the Customer shall store the Products separately from all other products held by the Customer so that they remain readily identifiable as Viridian's property;
- (c) the Customer shall maintain the Products in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
- (d) the Customer shall hold any such insurance proceeds on trust for Viridian;
- (e) the Customer holds the Products as bailee and fiduciary for Viridian, but may use or sell the Products in its ordinary course of business;
- (f) if the Customer sells or otherwise disposes of the Products, the proceeds of sale shall be held in trust by the Customer for Viridian; and
- (g) the Customer shall not pledge, charge or in any way encumber (or permit the pledge, charge or encumbrance of) the Products and Services by way of security for any indebtedness of the Customer or any other person.
- 10.2 If the Products and Services are attached, fixed, or incorporated into any property of the Customer, by way of any manufacturing, installation or assembly process (either by Viridian, the Customer or any third party) so that they are no longer identifiable or separable, title in the composite Products and Services shall remain with Viridian in accordance with clause 10.1 above until the Customer has made payment for all Products and Services. Where those Products and Services are mixed with other property so as to be part of or a constituent of any new products and services, title to these new products and services shall be deemed to be assigned to Viridian as security for the full satisfaction by the Customer of the full amount owing between Viridian and the Customer.
- 10.3 The Customer gives irrevocable authority to Viridian to enter any premises occupied by the Customer or on which Products are situated at any reasonable time after default by the Customer or before default if Viridian believes a default is likely and to remove and repossess any Products and any other property to which Products and Services are attached or in which Products and Services are incorporated. Viridian shall not be liable for any costs, damages, expenses or losses incurred by the Customer or any third party as a result of this action, nor liable in contract or in tort or otherwise in any way whatsoever unless by statute such liability cannot be excluded. Viridian may:

- (a) resell any repossessed Products and credit the Customer's account with the net proceeds of sale (after deduction of all repossession, storage, selling and other costs);
- (b) retain any repossessed Products and credit the Customer's account with the invoice value thereof less such sum as Viridian reasonably determines on account of wear and tear, depreciation, obsolescence, loss or profit and costs; or
- (c) dispose of any repossessed Products in such manner and generally on such terms and conditions as Viridian thinks desirable,
- and otherwise do anything that the Customer could do in relation to the Products.
- 10.4 Where Products and Services are retained by Viridian pursuant to clause 10.3 the Customer waives the right to receive notice under section 120 of the Personal Property Securities Act 1999 ("PPSA") and to object under section 121 of the PPSA.
- 10.5 The following shall constitute defaults by the Customer:
- (a) non-payment of any sum by the due date.
- (b) the Customer intimates that it will not pay any sum by the due date.
- (c) any Products and Services are seized by any other creditor of the Customer or any other creditor intimates that it intends to seize Products and Services.
- (d) any Products and Services in the possession of the Customer are materially damaged while any sum due from the Customer to Viridian remains unpaid.
- (e) the Customer is bankrupted or put into liquidation or a receiver is appointed to any of the Customer's assets or a landlord distains against any of the Customer's assets.
- (f) a Court judgment is remains against the Customer and remains unsatisfied for seven (7) days.
- (g) any material adverse change in the financial position of the Customer.
- 10.6 If the Credit (Repossession) Act 1997 applies to any transaction between the Customer and Viridian, the Customer has the rights provided in that Act despite anything contained in these terms and conditions of trade.
- 10.7 The Customer acknowledges and agrees that the Customer grants a security interest to Viridian in all Products and their proceeds previously supplied by Viridian to the Customer (if any) and all after acquired Products supplied by Viridian to the Customer (or for the Customer's account) and their proceeds as security for full payment of the Price and all other amounts payable by the Customer to Viridian (whether under this Agreement or under the terms of any specific contract relating to the supply of Products and Services by Viridian to the Customer) and for the Customer's performance of all of its other obligations to Viridian.
- 10.8 Unless otherwise defined in this Agreement or the context otherwise requires, the terms used in this Agreement have the meanings given to them in the PPSA.
- 10.9 The Customer agrees that:
- (a) it will promptly do all things (including signing any further documents) and provide any further assistance and information (which information the Customer warrants to be complete, accurate and up-to-date in all respects) to ensure that the security interest in all Products and Services (and proceeds thereof) supplied by Viridian is enforceable, perfected and otherwise effective and to enable Viridian to exercise any powers in connection with the security interest;
- (b) Viridian may register a financing statement or financing change statement on the Personal Property Securities Register and do anything else required to perfect its security interest created by this Agreement;
- (c) it will give Viridian not less than 14 days prior written notice of any proposed change in its name and/or other change in its details (including, but not limited to, changes in its address, facsimile number, trading name or business practice);
- (d) unless otherwise agreed to in writing by Viridian, the Customer waives its right to receive a verification statement in respect of any financing statement or financing change statement relating to the security interest;
- (e) to the maximum extent permitted by law, the Customer waives its rights, and with Viridian's agreement, contracts out of its rights under the sections referred to in sections 107(2)(c) to (i) of the PPSA; and
- (f) without limiting any other provision of this Agreement, the Customer agrees that nothing in sections 114(1)(a), 116, 125, 126, 127, 129, 131, 133 and 134 of the PPSA shall apply to these terms and conditions and, with Viridian's agreement, contracts out of such sections.
- 10.10 The Customer agrees to indemnify Viridian for any costs incurred by Viridian under this provision.
- 10.11 Nothing in this provision shall affect Viridian's rights as an unpaid seller in relation to the Products and Services.
- 11. PAYMENT ALLOCATION**
- 11.1 Viridian may in its discretion allocate any payment received from the Customer towards any invoice that Viridian determines and may do so at the time of receipt or at any time afterwards and on default by the Customer may reallocate any payments previously received and allocated. In the absence of any payment allocation by Viridian, payment shall be deemed to be allocated in such manner as preserves the maximum value of Viridian's purchase money security interest in the Products and Services.
- 12. DISPUTES**
- 12.1 No claim relating to Products and Services will be considered unless made within seven (7) days of delivery.
- 13. LIABILITY**
- 13.1 The Consumer Guarantees Act 1993, the Fair Trading Act 1986 and other statutes may imply warranties or conditions or impose obligations upon Viridian 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 Viridian, Viridian's liability shall, where it is allowed, be excluded or if not able to be excluded only apply to the minimum extent required by the relevant statute.
- 13.2 Except as otherwise provided by clause 13.1, Viridian shall not be liable for any loss or damage of any kind whatsoever, arising from the supply of Products and Services by Viridian to the Customer, including consequential loss whether suffered or incurred by the Customer or another person and whether in contract or tort (including negligence) or otherwise and irrespective of whether such loss or damage arises directly or indirectly from the Products and Services provided by Viridian to the Customer.
- 13.3 The Customer shall indemnify Viridian against all claims and loss of any kind whatsoever however caused or arising and without limiting the generality of the foregoing of this clause whether caused or arising as a result of the negligence of Viridian or otherwise, brought by any person in connection with any matter, act, omission, or error by Viridian its agents or employees in connection with the Products and Services.
- 13.4 The Customer acknowledges and agrees that it is the Customer's sole responsibility to ensure that the structure to which the Products and Services are affixed is suitable for the intended purpose and that the Customer has taken all necessary care and attention to ensure that the structure to which the Products and Services are affixed is a suitable structure (including, without limitation, seeking appropriate advice from third parties).
- 13.5 The Customer hereby indemnifies Viridian and shall keep Viridian indemnified from and against all losses, costs, penalties, liabilities or expenses suffered or incurred by Viridian as a result of:
- (a) any breach or attempted breach by the Customer of this Agreement;
- (b) the structure to which the Products and Services are affixed not being suitable for the intended purpose;
- (c) defects of any kind whatsoever in the structure to which the Products and Services are affixed;

- (d) any misuse, abuse, neglect, operator error or use of improper supplies in relation to the Products and Services; and
- (e) any breach by the Customer of any statute, regulation, order or law to which it is subject or with which it is required to comply

13.6 If, contrary to the disclaimer or liability contained in these terms and conditions of trade Viridian is deemed to be liable to the Customer, following and arising from the supply of Products and Services by it to the Customer, then it is agreed between Viridian and the Customer that such liability is limited in its aggregate to \$500.00.

14. WARRANTY

14.1 Any written warranty that Viridian provides to the Customer will also form part of this Agreement.

14.2 With the exception of any express written warranty Viridian gives, no representation, warranty or condition will be implied by any statute, at common law or otherwise.

15. RE-SUPPLY

15.1 If the Customer re-supplies the Products and Services in trade, then in respect of the supplies by the Customer to its customers the Customer shall:

- (a) ensure that its customers are notified at or before the time Products and Services are supplied, that Viridian does not undertake that repair facilities and/or parts will be available for the Products and Services beyond the duration of any standard product warranty which is provided with the Products and Services;
- (b) comply with clause 17.2 below;
- (c) list all known defects in the Products and Services:
 - (i) on a notice displayed with the Products and Services; and
 - (ii) on any sales agreement, docket, receipt or credit card voucher and keep a copy of the same;
- (d) not take any steps to conceal any defects in the Products and Services from its customers; and
- (e) not make any representations concerning the description of Products and Services if it does not correspond with the actual description and specifications of the Products and Services.

16. DEFECTIVE OR DAMAGED PRODUCTS AND SERVICES

16.1 Claims in respect of defective or damaged Products and Services must be notified within 7 days of receipt of Products and Services and defective or damaged Products and Services must be returned within 30 days following delivery. The Customer shall have no claim with regard to Products and Services which have already been processed, redelivered, altered or in any way utilised by the Customer. No claim shall entitle the Customer to withhold payment of any sum due to Viridian Glass or any other contract which Viridian may have with the Customer nor shall a claim give any right to set off any payment due by the Customer to Viridian.

16.2 The Customer agrees and acknowledges that Viridian assumes no liability for any direct or consequential loss or damage (including loss of profits) or any property damage or personal injury claim whether incurred or made by the Customer or a third party whether due to defective Products and Services or a breach or the terms of this Agreement (including that arising from the negligence or otherwise of Viridian, its servants or agents).

17. CONSUMER GUARANTEES ACT

17.1 In agreeing to the terms of this Agreement, both parties confirm and agree that:

- (a) the Customer and Viridian are each 'in trade';
- (b) the Products and Services are supplied to, and acquired by, the Customer for a business purpose; and
- (c) any statutory guarantees and implied terms, covenants and conditions including those contained in the Consumer Guarantees Act 1993 are excluded to the fullest extent permitted by law.

17.2 To the fullest extent permitted at law, where the Customer sells the Products to a third party that is 'in trade' and acquiring the Products for a business purpose, such terms of sale must include the same exclusions of statutory liability as those contained in clause 17.1.

18. PERSONAL GUARANTEE OF COMPANY DIRECTORS OR TRUSTEES

18.1 If the Customer is a company or trust, the director(s) or trustee(s) signing this Agreement, in consideration for Viridian agreeing to supply Products and Services and grant credit to the Customer at their request, also sign this Agreement in their personal capacity and jointly and severally personally undertake as principal debtors to Viridian the payment of any and all monies now or hereafter owed by the Customer to Viridian and indemnify Viridian against non-payment by the Customer. Any personal liability of a signatory hereto shall not exclude the Customer in any way whatsoever from the liabilities and obligations contained in this contract. The signatories and Customer shall be jointly and severally liable under the terms and conditions of this Agreement and for payment of all sums due hereunder.

19. MISCELLANEOUS

19.1 Viridian may vary the terms and conditions of this Agreement from time to time by notice in writing to you. Any variation will be effective from the date specified in the notice provided to you ("Variation Effective Date") and if the Customer makes orders or accepts quotes for Products and Services after the Variation Effective Date the Customer shall be deemed to have accepted the variation. If you do not accept the variation to the terms and conditions of this Agreement, you will not be penalised by us, however you may not make any further orders for Products and Services from the Variation Effective Date.

19.2 Viridian shall not be liable for delay or failure to perform its obligations if the cause of the delay or failure is beyond its control.

19.3 Failure by Viridian to enforce any of the terms and conditions contained in this Agreement shall not be deemed to be a waiver of any of the rights or obligations Viridian has under this Agreement.

19.4 If any provision of this Agreement shall be invalid, void or illegal or unenforceable the validity existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

19.5 Where applicable the Construction Contracts Act 2002 applies.

Receipt of Terms and Conditions

Signed:

Date:

Name:

Designation:

Please sign and return all pages with application.