

## 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 "Consumer" means a Customer who is a "consumer" for the purposes of the Fair Trading Act 1986 ("FTA") and Consumer Guarantees Act 1993 ("CGA").
- 1.5 "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.

- 1.6 "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.
- 1.7 "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.
- 1.8 "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.
- 2.3 The Customer and Viridian agree that the Customer is a Consumer and that this Agreement is a "consumer contract" as defined in the Fair Trading Act 1986.

## 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 The price payable by the Customer will be the price specified in the quote, order form or other documentation between Viridian and the Customer.

- 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. Where this happens, Viridian will notify the Customer as soon as practicable and the Customer will have 5 working days from the date of notification to cancel their purchase and receive a full refund of any amounts paid.

## 5. PAYMENT

- 5.1 Payment for the Products and Services shall be made as follows:

- (a) a deposit of 50% of the price is to be paid immediately upon acceptance of a quote or placement of an order; and
- (b) balance immediately on completion of delivery and (where applicable) installation of the Products and Services.

- 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 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 the actual cost of Products and Services exceeds the Price (due to circumstances that could not be anticipated at the time of agreeing the Price) or if Products and Services are required in addition to the Products and Services which are included in the Price, the Customer agrees to pay for the additional cost of such additional Products and Services. Viridian must notify the Customer of any Price increase and where the actual cost materially exceeds the agreed Price, the Consumer may, within 2 working days, cancel this Agreement and receive a full refund of any part of the Price paid at that time.

6.3 Unless otherwise stated, quotations do not include installation and maintenance costs, taxes, import duties or any other levies, tariffs, freight or insurance.

6.4 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 quoted. Viridian will notify the Customer of any additional costs. Where the actual cost materially exceeds the agreed price, the Customer may, within 2 working days, cancel the order and receive a full refund of the price paid at that time.

## 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 has not committed any act of bankruptcy and knows of no circumstances which would entitle any secured creditor to exercise any 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 All Products are custom built by Viridian once the Customer accepts a quote or places an order. Where the Customer cancels an order or an accepted quote, 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 or delivery costs for the Products will be specified in the quote provided to 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 or as set out in the quote or order form.

7.7 Neither party shall be liable to the other for any loss or damage (in either case, or any kind and whether direct, indirect, or consequential) arising from any breach of this Agreement and in respect of Viridian, for any delay or fault in the delivery of the Products and Services due to any reason 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 due to reasons beyond the control of Viridian shall not invalidate the Agreement or subject Viridian to any penalty whatsoever.

7.8 In agreeing the Price, Viridian has assessed the accessibility of the location for delivery and where applicable, installation and any costs in relation to this have been included in the price set out in the relevant quote or order form. If there are any material changes to the time for delivery, accessibility of the location for delivery or other elements beyond the control of either party that necessitate a change to the price, any such change will be pre-agreed between the parties prior to provision of the Products and Services.

## 8. RETURNS

8.1 The Customer acknowledges and agrees that all Products and Services are custom built to order and are nonreturnable except as provided in clause 12 below.

## 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 Nothing in this provision shall affect Viridian's rights as an unpaid seller in relation to the Products and Services.

## 11. WARRANTY

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

11.2 The CGA and FTA applies with regard to any statutory warranties, conditions and other obligations imposed on Viridian.

## 12. DEFECTIVE OR DAMAGED PRODUCTS AND SERVICES

12.1 The Customers rights with regard to defective or damaged Products or Services will be as provided for in the Consumer Guarantees Act 1993

## 13. MISCELLANEOUS

13.1 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.

13.2 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.

13.3 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.

13.4 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.

13.5 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.