

**1. Definitions**

- 1.1 “Seller” means Kristen Marie Budd T/A Scratchless Glass Australia, its successors and assigns, or any person acting on behalf of, and with the authority of, Kristen Marie Budd T/A Scratchless Glass Australia.
- 1.2 “Client” means the person/s requesting the Seller to provide the Services as specified in any invoice, document or order, and if there is more than one person requesting the Services, is a reference to each person jointly and severally.
- 1.3 “Services” means all Goods or Services provided by the Seller to the Client at the Client’s request from time to time (where the context so permits the terms ‘Goods’ or ‘Services’ shall be interchangeable for the other).
- 1.4 “Price” means the price payable for the Services as agreed between the Seller and the Client in accordance with clause 4 of this contract.

**2. Acceptance**

- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for, or accepts, Services provided by the Seller.
- 2.2 These terms and conditions may only be amended with the Seller’s consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and the Seller.
- 2.3 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions Act 2000 or any other applicable provisions of that Act or any Regulations referred to in that Act.

**3. Change in Control**

- 3.1 The Client shall give the Seller not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client’s details (including but not limited to, changes in the Client’s name, address, contact phone or fax number/s, or business practice). The Client shall be liable for any loss incurred by the Seller as a result of the Client’s failure to comply with this clause.

**4. Price and Payment**

- 4.1 At the Seller’s sole discretion the Price shall be either:
  - (a) as indicated on any invoice provided by the Seller to the Client; or
  - (b) the Seller’s quoted price (subject to clause 4.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days (or as otherwise specified).
- 4.2 The Seller reserves the right to change the Price:
  - (a) if a variation to the Services which are to be provided (including any applicable Goods, plans and/or specifications) is requested; or
  - (b) where additional Services are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, limitations to accessing the site, inclement weather, obscured/latent defects which require remedial work, health hazards and safety considerations (such as the discovery of asbestos or other toxic substances), prerequisite work by any third party not being completed or additional surface preparation, etc.) which are only discovered on commencement of the Services; or
  - (c) in the event of increases to the Seller in the cost of labour or materials, which are beyond the Seller’s control.
- 4.3 At the Seller’s sole discretion, a deposit of up to twenty percent (20%) may be required prior to provision of the Services.
- 4.4 Time for payment for the Services being of the essence, the Price will be payable by the Client on the date/s determined by the Seller, which may be:
  - (a) prior to provision of the Services; or
  - (b) the date specified on any invoice or other form as being the date for payment; or
  - (c) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by the Seller.
- 4.5 Payment may be made by cash, bank cheque, electronic/on-line banking, credit card (plus a surcharge of up to one and a half percent (1.5%) of the transaction), or by any other method as agreed to between the Client and the Seller.
- 4.6 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to the Seller an amount equal to any GST the Seller must pay for any provision of Services by the Seller under this contract, or any other agreement. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition the Client must pay any other taxes and duties that may be applicable in addition to the Price, except where they are expressly included in the Price.

**5. Provision of the Services**

- 5.1 The commencement date will be put back and/or the completion date extended by whatever time is reasonable in the event that the Seller claims an extension of time (by giving the Client written notice) where completion is delayed by an event beyond the Seller’s control, including but not limited to, any event under clause 17.7 or any failure by the Client to:
  - (a) make a selection; or
  - (b) have the site ready for the Services; or
  - (c) notify the Seller that the site is ready.
- 5.2 The Seller may provide the Services by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions in these terms and conditions.
- 5.3 Any time specified by the Seller for the provision of Services is an estimate only and the Seller will not be liable for any loss or damage incurred by the Client as a result of any delay. However both parties agree that they shall make every endeavour to enable the Services to be provided at the time and place as was arranged between both parties. In the event that the Seller is unable to provide the Services as agreed solely due to any action or inaction of the Client then the Seller shall be entitled to charge a reasonable fee for re-providing the Services at a later time and date.
- 5.4 The Client warrants that the existing surface upon which Goods are to be applied, is sound and of suitable condition, and will sustain the application thereof, and the Seller shall not be liable for any claims, demands, losses, damages, costs and expenses howsoever caused or arising caused by the failure or poor integrity of the surface upon which the Goods are applied. Any additional work required to repair surfaces to ensure the performance of the Goods shall be charged in addition to the Price.

**6. Risk**

- 6.1 Risk of damage to or loss of Goods passes to the Client on completion of the Services and the Client must insure the Goods on or before this date.

- 6.2 If any of the Goods are damaged or destroyed following completion of the Services, but prior to ownership passing to the Client, the Seller is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Seller is sufficient evidence of the Seller's rights to receive the insurance proceeds without the need for any person dealing with the Seller to make further enquiries.
- 6.3 Where the Seller gives advice or recommendations to the Client, or the Client's agent, with specific instructions regarding the Services and such advice or recommendations are not acted upon, or where the Client's instructions to the Seller compromises the purpose of the Services, then the Seller shall not be liable in any way whatsoever for any damages or losses that occur after any subsequent commencement of the Services.
- 6.4 The Client acknowledges that variations of colour and texture may be inherent in the Goods. The Seller shall not be liable for any loss, damages or costs howsoever arising resulting from any variation of the colour or texture between surfaces, the different areas treated and/or batches supplied.
- 7. Access and Outside Agents**
- 7.1 The Client shall ensure that the Seller has clear and free access to the site at all times to enable them to provide the Services. The Seller shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas), unless due to the negligence of the Seller.
- 7.2 The Seller shall not be held responsible for any damage caused by outside agents. Where the Client requests the Seller to repair such damage, then the Seller reserves the right to charge the Client for any costs incurred in rectifying such damage.
- 8. Compliance with Laws**
- 8.1 The Client and the Seller shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Services, including any work health and safety (WHS) laws relating to building/construction sites and any other relevant safety standards or legislation.
- 8.2 The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required.
- 9. Title**
- 9.1 The Client acknowledges and agrees that the Client's obligations to the Seller for the provision of Services shall not cease, and ownership of the Goods shall not pass, until:
- (a) the Client has paid the Seller all amounts owing for the particular Services; and
  - (b) the Client has met all other obligations due by the Client to the Seller in respect of all contracts between the Seller and the Client.
- 9.2 Receipt by Client of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then the Client's ownership or rights in respect of the Services, and this contract, shall continue.
- 9.3 It is further agreed that, until ownership of the Goods passes to the Client in accordance with clause 9.1:
- (a) the Client is only a bailee of the Goods and must return the Goods to the Seller immediately upon request by the Seller;
  - (b) the Client holds the benefit of the Client's insurance of the Goods on trust for the Seller and must pay to the Seller the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;
  - (c) the Client must not sell, dispose, or otherwise part with possession of the Goods. If the Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of sale of the Goods on trust for the Seller and must pay or deliver the proceeds to the Seller on demand.
  - (d) the Client should not convert or process the Goods or intermix them with other goods, but if the Client does so then the Client holds the resulting product on trust for the benefit of the Seller and must dispose of or return the resulting product to the Seller as the Seller so directs.
  - (e) the Client shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of the Seller;
  - (f) the Client irrevocably authorises the Seller to enter any premises where the Seller believes the Goods are kept and recover possession of the Goods.
- 10. Personal Property Securities Act 2009 ("PPSA")**
- 10.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 10.2 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods, and/or any monetary obligation of the Client to the Seller for Services, that have previously been provided (if any), and that will be provided in the future, by the Seller to the Client.
- 10.3 The Client undertakes to:
- (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Seller may reasonably require to:
    - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
    - (ii) register any other document required to be registered by the PPSA; or
    - (iii) correct a defect in a statement referred to in sub-clauses (i) or (ii);
  - (b) indemnify, and upon demand reimburse, the Seller for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any registration made thereby;
  - (c) not register a financing change statement in respect of a security interest without the prior written consent of the Seller;
  - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the registration in favour of a third party without the prior written consent of the Seller;
  - (e) immediately advise the Seller of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
- 10.4 The Seller and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 10.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.

- 10.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 10.7 Unless otherwise agreed to in writing by the Seller, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 10.8 The Client must unconditionally ratify any actions taken by the Seller under clauses 10.3 to 10.5.
- 10.9 Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

#### **11. Security and Charge**

- 11.1 In consideration of the Seller agreeing to provide Services, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 11.2 The Client indemnifies the Seller from and against all the Seller's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Seller's rights under this clause.
- 11.3 The Client irrevocably appoints the Seller and each director of the Seller as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 11 including, but not limited to, signing any document on the Client's behalf.

#### **12. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)**

- 12.1 The Client must inspect the Services on completion (or Goods on delivery) and must, within seven (7) days of such time, notify the Seller in writing of any evident defect/damage, error or omission, shortage in quantity, or failure to comply with the description or quotation. The Client must notify any other alleged defect in the Services as soon as reasonably possible after any such defect becomes evident. Upon such notification the Client must allow the Seller to inspect/review the Services.
- 12.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions ("**Non-Excluded Guarantees**").
- 12.3 The Seller acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 12.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, the Seller makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Services. The Seller's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 12.5 If the Client is a consumer within the meaning of the CCA, the Seller's liability is limited to the extent permitted by section 64A of Schedule 2.
- 12.6 If the Seller is required to rectify, re-provide, or pay the cost of re-providing the Services under this clause or the CCA, but is unable to do so, then the Seller may refund any money the Client has paid for the Services but only to the extent that such refund shall take into account the value of Services which have been provided to the Client which were not defective.
- 12.7 If the Client is not a consumer within the meaning of the CCA, the Seller's liability for any defect or damage in the Services is:
- (a) limited to the value of any express warranty, or warranty card, provided to the Client by the Seller (at the Seller's sole discretion); or
  - (b) limited to any warranty to which the Seller is entitled, if the Seller did not manufacture the Goods; or
  - (c) otherwise negated absolutely.
- 12.8 Subject to this clause 12, returns will only be accepted provided that:
- (a) the Client has complied with the provisions of clause 12.1; and
  - (b) the Seller has agreed that the Goods are defective; and
  - (c) the Goods are returned within a reasonable time at the Client's cost (if that cost is not significant); and
  - (d) the Goods are returned in as close a condition to that in which they were delivered as is possible.
- 12.9 Notwithstanding clauses 12.1 to 12.8, but subject to the CCA, the Seller shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
- (a) the Client failing to properly maintain or store any Goods; or
  - (b) the Client using the Goods for any purpose other than that for which they were designed; or
  - (c) the Client continuing the use of any Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user; or
  - (d) the Client failing to follow any instructions or guidelines provided by the Seller; or
  - (e) fair wear and tear, any accident, or act of God.
- 12.10 Notwithstanding anything contained in this clause if the Seller is required by a law to accept a return then the Seller will only accept a return on the conditions imposed by that law.

#### **13. Intellectual Property**

- 13.1 Where the Seller has designed, drawn or developed Goods for the Client, then the copyright in any designs and drawings and documents shall remain the property of the Seller.
- 13.2 The Client warrants that all designs, specifications or instructions given to the Seller will not cause the Seller to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify the Seller against any action taken by a third party against the Seller in respect of any such infringement.
- 13.3 The Client agrees that the Seller may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods (or digital media thereof) which the Seller has created for the Client.

#### **14. Default and Consequences of Default**

- 14.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at the Seller's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 14.2 If the Client owes the Seller any money, the Client shall indemnify the Seller from and against all costs and disbursements incurred by the Seller in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Seller's contract default fee, and bank dishonour fees).
- 14.3 Further to any other rights or remedies the Seller may have under this contract, if the Client has made payment to the Seller by credit card, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further

- costs incurred by the Seller under this clause 14 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this contract.
- 14.4 Without prejudice to any other remedies the Seller may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions the Seller may suspend or terminate the provision of Services to the Client. The Seller will not be liable to the Client for any loss or damage the Client suffers because the Seller has exercised its rights under this clause.
- 14.5 Without prejudice to the Seller's other remedies at law, the Seller shall be entitled to cancel all, or any part, of any order of the Client which remains unfulfilled, and all amounts owing to the Seller shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to the Seller becomes overdue, or in the Seller's opinion the Client will be unable to make a payment when it falls due;
  - (b) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
  - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.
- 15. Cancellation**
- 15.1 The Seller may cancel any contract to which these terms and conditions apply, or cancel the provision of Services at any time before the Services have been completed (or the Goods have been delivered), by giving written notice to the Client. On giving such notice the Seller shall repay to the Client any money paid by the Client for Services not already provided. The Seller shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 15.2 In the event that the Client cancels this contract, or the provision of Services, the Client shall be liable for any and all loss incurred (whether direct or indirect) by the Seller as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 15.3 Cancellation of orders for Goods made to the Client's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.
- 16. Privacy Act 1988**
- 16.1 The Client agrees for the Seller to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, previous credit applications, credit history) about the Client in relation to credit provided by the Seller.
- 16.2 The Client agrees that the Seller may exchange information about the Client with those credit providers and with related body corporates for the following purposes:
- (a) to assess an application by the Client; and/or
  - (b) to notify other credit providers of a default by the Client; and/or
  - (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
  - (d) to assess the creditworthiness of the Client including the Client's repayment history in the preceding two (2) years.
- 16.3 The Client consents to the Seller being given a consumer credit report to collect overdue payment on commercial credit.
- 16.4 The Client agrees that personal credit information provided may be used and retained by the Seller for the following purposes (and for other agreed purposes or required by):
- (a) the provision of Services; and/or
  - (b) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Services; and/or
  - (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
  - (d) enabling the collection of amounts outstanding in relation to the Services.
- 16.5 The Seller may give information about the Client to a CRB for the following purposes:
- (a) to obtain a consumer credit report;
  - (b) allow the CRB to create or maintain a credit information file about the Client including credit history.
- 16.6 The information given to the CRB may include:
- (a) personal information as outlined in 16.1 above;
  - (b) name of the credit provider and that the Seller is a current credit provider to the Client;
  - (c) whether the credit provider is a licensee;
  - (d) type of consumer credit;
  - (e) details concerning the Client's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
  - (f) advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Client no longer has any overdue accounts and the Seller has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
  - (g) information that, in the opinion of the Seller, the Client has committed a serious credit infringement;
  - (h) advice that the amount of the Client's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 16.7 The Client shall have the right to request (by e-mail) from the Seller:
- (a) a copy of the information about the Client retained by the Seller and the right to request that the Seller correct any incorrect information; and
  - (b) that the Seller does not disclose any personal information about the Client for the purpose of direct marketing.
- 16.8 The Seller will destroy personal information upon the Client's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this contract or is required to be maintained and/or stored in accordance with the law.
- 16.9 The Client can make a privacy complaint by contacting the Seller via e-mail. The Seller will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Client is not satisfied with the resolution provided, the Client can make a complaint to the Information Commissioner at [www.oaic.gov.au](http://www.oaic.gov.au).

**17. General**

- 17.1 The failure by the Seller to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Seller's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 17.2 These terms and conditions, and any contract to which they apply, shall be governed by the laws of Queensland, the State in which the Seller has its principal place of business, and are subject to the jurisdiction of the courts in that State.
- 17.3 Subject to clause 12, the Seller shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by the Seller of these terms and conditions (alternatively the Seller's liability shall be limited to damages which under no circumstances shall exceed the Price).
- 17.4 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by the Seller nor to withhold payment of any invoice because part of that invoice is in dispute.
- 17.5 The Seller may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 17.6 The Client agrees that the Seller may amend these terms and conditions at any time. If the Seller makes a change to these terms and conditions, then that change will take effect from the date on which the Seller notifies the Client of such change. The Client will be taken to have accepted such changes if the Client makes a further request for the Seller to provide Services to the Client.
- 17.7 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 17.8 The Client warrants that it has the power to enter into this contract and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this contract creates binding and valid legal obligations on it.