

All Contracts entered into between Winlife PVC Windows and the Customer relating to any Goods and Glass and any services provided by WinLife PVC Windows are subject to the following terms and conditions of sale unless otherwise expressly agreed in writing

TERMS AND CONDITIONS OF SALE

1. Definitions

In this agreement the following terms have the corresponding meanings:

- (a) **"Application"** means the application by the Customer to WinLife PVC Windows for commercial credit;
- (b) **"Contract"** means the contract formed between WinLife PVC Windows and the Customer by an Order accepted by an Order Acknowledgment;
- (c) **"Customer"** means the person placing the Order with WinLife PVC Windows;
- (d) **"Goods"** means any good, products, services or materials to be supplied by WinLife PVC Windows, in particularly goods is referred to Window frame. Goods does not include Glass;
- (e) **"Glass"** means the glass to be supplied and installed in the Window by WinLife PVC Windows.
- (e) **"Interest"** will be charged on overdue accounts at the Penalty Interest Rates Act 1983 (Vic) rate plus 2%
- (f) **"Order"** is an order or offer to purchase described in clause 1(a);
- (g) **"Order Acknowledgment"** is defined in clause 1(b);
- (h) **"Payment"** is to be made by cash, cheque, bank cheque or Electronic Funds Transfer without deduction within 30 days from the end of the month in which the invoice was issued.
- (i) **"WinLife PVC Windows"** means Ekosan PVC trading as "WinLife PVC Windows";
- (j) unless otherwise stated, an expression used or defined in the Corporations Act 2001 has the same meaning in the Terms and Conditions.

2. Orders, Order Acknowledgments and Contract

- (a) An order or an offer to purchase can be made by the Customer in writing or verbally.
- (b) An Order is accepted when the Customer receives from WinLife PVC Windows an order acknowledgment in writing.
- (c) When an Order is accepted by an Order Acknowledgment the Contract will be wholly documented by (in descending order of precedence) any specific term(s) agreed in writing, the Order Acknowledgment and these Terms and Conditions.
- (d) Previous dealings between WinLife PVC Windows and the Customer shall not have any effect on the Contract.
- (e) Trade custom and/or trade usage is superseded by the Contract and shall not be applicable in the interpretation of the Contract.
- (f) A Contract constitutes the entire agreement between WinLife PVC Windows and the Customer with respect to the Goods and Glass supplied under the Contract, all prior negotiations, proposals and correspondence are superseded by that Contract.
- (g) If at any time in relation to the supply of the Goods and Glass, the Customer provides, refers to, submits or otherwise uses terms and conditions other than these Terms and Conditions such terms and conditions will not form part of, or be incorporated into, the Contract.

3. Prices

- (a) Unless otherwise agreed in writing, the price charged for the Goods and Glass shall be
 - (i) exclusive of any transaction tax ("transaction tax" includes the Goods and Glass and services tax as well as any identified or new transaction taxes that come into existence after the effective date of these Terms and Conditions), and
 - (ii) as per the price ruling as determined by WinLife PVC Windows at the date of delivery. Any price indications or price lists are subject to alteration in accordance with the price ruling as at that date of delivery.
- (b) Where a product margin is included on the invoice for Goods and Glass the Customer will pay that product margin in addition to any quoted price.
- (c) Where a transaction tax applies to any supply made under these Terms and Conditions, WinLife PVC Windows may recover from the Customer an additional amount on account of that transaction tax.

- (d)** The Customer may upon the alteration of the price charged for the Goods and Glass in accordance with this clause 2, cancel any Order (or part thereof) at the new price within 7 days of notice of change of price.
- (e)** The Customer shall provide its tax file number and any information required by any GST or equivalent to WinLife PVC Windows prior to seeking any tax exemption.
- (f)** WinLife PVC Windows Reserves the right to vary price due to suppliers increase to prices.

4. Title and related matters

- (a)** The legal and equitable title to the Goods and Glass will only be transferred from WinLife PVC Windows to the Customer when the Customer has met and paid all that is owed to WinLife PVC Windows on any account whatsoever.
- (b)** The Customer acknowledges that until the Customer has met and paid all that is owed to WinLife PVC Windows on any account whatsoever, the Customer holds the Goods and Glass as bailee for WinLife PVC Windows and that a fiduciary relationship exists between the Customer and WinLife PVC Windows.
- (c)** Winlife PVC Windows reserves the right to take possession and dispose of Goods and Glass as it sees fit at any time until full payment.
- (d)** Until WinLife PVC Windows receives full payment of all monies due to it from the Customer, the Customer shall keep the Goods and Glass separate and in good condition as a fiduciary of WinLife PVC Windows, clearly showing WinLife PVC Windows's ownership of the Goods and Glass and, shall keep books recording WinLife PVC Windows's ownership of the Goods and Glass and the Customer's sale or otherwise of them in accordance with clauses 6(e) and 6(f). The Customer if required, shall deliver the Goods and Glass up to WinLife PVC Windows.
- (e)** If the Customer defaults, in addition to clause 7(b), WinLife PVC Windows may take possession of the Goods and Glass wherever the Goods and Glass are located and the Customer agrees that representatives of WinLife PVC Windows may enter upon the Customer's premises for that purpose.
- (f)** Despite clause 6(a), the Customer may sell as fiduciary agent for WinLife PVC Windows the Goods and Glass to a third party in the normal course of the Customer's business provided that where the Customer is paid by that third party, the Customer holds the proceeds of sale to the extent of the amount owing by the Customer to WinLife PVC Windows at the time of receipt of such proceeds on trust for WinLife PVC Windows. The Customer must keep those proceeds separate on trust for WinLife PVC Windows and not mix those proceeds with any other monies.
- (g)** If the Customer uses the Goods and Glass in some manufacturing or construction process of its own or some third party, then the Customer shall hold such part of the proceeds of such manufacturing or construction process as related to the Goods and Glass on trust for WinLife PVC Windows. Such part shall be deemed to equal in dollar terms the amount owing by the Customer to WinLife PVC Windows at the time of the receipt of such proceeds. The Customer must keep that part of the proceeds separate on trust for WinLife PVC Windows and not mix those proceeds with any other monies.
- (h)** The Customer agrees, at WinLife PVC Windows's request, to do all acts matters and things including sign all documents (provided they are on terms similar to or having the same effect and are on terms no more onerous on the Customer than these Terms and Conditions) to ensure WinLife PVC Windows holds a valid and perfected security interest under the Personal Property Securities Act 2009 (Cth). Any failure by the Customer to promptly comply with any such request constitutes a default under Clause 7 of these Terms and Conditions.
- (h)** The Customer agrees that Goods and Glass shall be deemed at all times to be dealt with by the Customer on a "first in first out" basis for the purpose of all transactions between the Customer and Winlife PVC Windows.
- (i)** The Customer grants permission to Winlife PVC Windows to enter any property where any products are stored and with such force as is necessary.
- (j)** The Customer agrees that a certificate purporting to be signed by an officer of WinLife PVC Windows identifying Goods and Glass as unpaid for shall be conclusive evidence that the Goods and Glass have not been paid for and of WinLife PVC Windows title thereto.

5. Delivery

- WinLife PVC Windows will make all reasonable efforts to have the Goods and Glass delivered to the Customer or his designated agent as agreed between the parties (or if there is no specific agreement then at WinLife PVC Windows's reasonable discretion).
- (a)** the Customer shall be deemed to have accepted delivery and liability for the Goods and Glass immediately WinLife PVC Windows notifies the Customer that any Goods and Glass are ready for collection or they are delivered to a carrier or to the Customer's business premises or site whether attended or not;
 - (b)** WinLife PVC Windows reserves the right to charge for any delivery;
 - (c)** A certificate purporting to be signed by an officer of WinLife PVC Windows confirming delivery shall be conclusive evidence of delivery as shall any signed delivery docket;
 - (d)** WinLife PVC Windows will not be liable for delay, failure or inability to deliver any Goods and Glass;
 - (e)** From the date the Customer has been delivered the Goods, the Customer must inform WinLife PVC Windows in writing of the date for the delivery of the Glass to be installed in the Goods. The Customer accepts and acknowledges that such date for

the delivery and installation of the Glass will be at least 8 weeks but no later than 12 weeks form the date of the installation of the Goods.

(f) WinLife PVC Windows will not proceed with the ordering of the Glass until WinLife PVC Windows has been notified of this date.

(g) Once the Customer is notified by WinLife the Goods and Glass are ready to be collect or installed or delivered the Customer agrees to pay all costs of WinLife PVC Windows in holding those Goods and Glass for the Customer and the following apply;

i) A 60 day grace period being a free of charge holding by period by WinLife PVC Windows is given to the Customer to collect the Goods and Glass or organize the Goods and Glass to be installed or delivered

ii) If 5.e)i) is not complied with by the Customer, the Customer will be charged a fee equal to 10% of the Customers Order with WinLife PVC Windows being a 120 day period holding fee. The 120 day holding period begins from the date of the expiration of the 60 days grace period. If at any time the Customer collects or organizes to be collected or the Goods and Glass are delivered to the Customer within this 120 day period, the Customer is shall be liable to pay WinLife PVC Windows the full 10% holding fee pursuant to this section.

iii) If 5.e)ii) is not complied with by the Customer, the Customer will be charged a further fee equal to 15% of the Customers Order with WinLife PVC Windows being further 180 day period holding fee. The 180 day holding period begins from the date of the expiration of the 120 day holding period in item 5.e)ii). If at any time the Customer collects or organizes to be collected or the Goods and Glass are delivered to the Customer within this 180 day period, the Customer is shall be liable to pay WinLife PVC Windows the full 15% holding fee pursuant to this section.

iv) If at any time the Customer organizes with WinLife PVC Windows to collects or delivered or install the Goods and Glass during the holding periods, the Goods and Glass will not be released by WinLife PVC Windows until full payment has been received by WinLife PVC Windows including payment of the full holding fees in items 5.e)ii) and 5.e)iii).

v) If the Goods and the Glass are not collected or delivered within the period specified within 5.e)iii) the Contract entered into between the Customer and WinLife PVC Windows becomes void and the Good and/or Glass held by WinLife PVC Windows can be sold or used by WinLife PVC Windows for its own use or discretion.

(h) WinLife PVC Windows shall not be liable for

(i) any failure to deliver or delay in delivery for any reason; or

(ii) any damage or loss due to unloading or packaging; or

(iii) except to the extent that such damage was caused by the negligent act or omission of WinLife PVC Windows, damage to property caused upon entering premises to deliver the Goods and Glass. Any costs incurred by WinLife PVC Windows due to any failure by the Customer to accept the Goods and Glass at time of delivery will be reimbursed by the Customer to WinLife PVC Windows. Except as required by law, WinLife PVC Windows will be under no obligation to accept Goods and Glass returned for any reason.

(iv) Immediately upon delivery the Customer accepts liability for the safe custody of Goods and Glass and agrees to indemnify Winlife PVC Windows for any losses relating thereto.

6. Limitation of Liability

(a) The Customer agrees to limit any claim it makes to the cost of supply of equivalent Goods and Glass.

(b) WinLife PVC Windows shall not be liable for any claim, loss or expense arising which is made after 14 days from the date of delivery of Goods and Glass and/or services (or at all once Goods and Glass have been unpacked, on-sold or otherwise used or applied) after which there shall be deemed to have been unqualified acceptance.

(c) WinLife PVC Windows shall not be liable in any way for any contingent, consequential, direct or indirect, special or punitive damage arising in any way and whether due to Winlife PVC Windows negligence or otherwise and the Customer acknowledges this express limit of liability and agrees to limit any claim accordingly.

(d) No other term, condition, agreement, warranty, representation or understanding whatsoever whether express or implied, in any way extending to, otherwise relating to or binding upon WinLife PVC Windows other than these Terms is made or given.

7. Exclusions

(a) Sample: No contract between WinLife PVC Windows and the Customer shall be or be deemed to be a sale by sample.

(b) If WinLife PVC Windows publishes material concerning its Goods and Glass, its services and/or its prices anything so published which is incompatible with these Terms is expressly excluded.

(c) The Customer will rely on its own knowledge and expertise in selecting any Goods and Glass for any purpose and any advice or assistance given for or on behalf of WinLife PVC Windowsshall be accepted at the Customer's risk and shall not be or be deemed given as expert or adviser nor to have been relied upon by the Customer or anyone claiming through the Customer.

8. Force Majeure

WinLife PVC Windows is not liable for failure to perform the Contract to the extent and for so long as its performance is prevented or delayed without substantial fault or negligence by WinLife PVC Windows because of:

- (a)** circumstances outside WinLife PVC Windows's control;
- (b)** failure of WinLife PVC Windows's machinery; or
- (c)** failure of a supplier to WinLife PVC Windows provided that WinLife PVC Windows gives notice to the Customer of the delay and uses reasonable efforts to remedy the cause of the delay quickly.

9. Customer Material

The Customer acknowledges and agrees that it is the Customer's sole responsibility to ensure that materials, designs, drawings, specifications, procedures etc which are provided by or on behalf of the Customer to be used by WinLife PVC Windows in meeting any orders are correct and appropriate in every particular and will be relied upon by WinLife PVC Windows.

10. Placement Of Orders

- (a)** in the event of any dispute arising concerning any order (and including any question of identity or authority or any telephone, facsimile or computer generated order) that the internal records of WinLife PVC Windows will be conclusive evidence of what was ordered in all respects;
- (b)** each order it places shall be and be deemed to be a representation by it made at the time that it is solvent and able to pay all of its debts as and when they fall due;
- (c)** failure to pay WinLife PVC Windows in accordance with these Terms shall be and be deemed to be conclusive evidence that the Customer had no reasonable grounds for making the representation referred to in 7.b) hereof and that the representations were unconscionable, misleading and deceptive;
- (d)** when any order is placed the Customer shall inform WinLife PVC Windows of any material facts which would or might reasonably affect the commercial decision by WinLife PVC Windows to accept the order and/or grant credit in relation thereto and any failure to do so by or on behalf of the Customer shall create and be deemed to create an inequality of bargaining position, shall constitute and be deemed to constitute the taking of an unfair advantage of WinLife PVC Windows and to be unconscionable, misleading and deceptive.

11. Goods and Glass and Services

- (a)** WinLife PVC Windows disclaims any responsibility or liability whatsoever relating to any Goods and Glass and/or services:
 - i) made or performed to designs, drawings and/or specifications and/or procedures etc or with materials which are provided or approved (whether in part or fully) by or on behalf of the Customer; and/or
 - ii) utilised, stored, handled or maintained incorrectly or inappropriately.
- (b)** The Customer agrees to check all Goods and Glass for compliance with all relevant applicable standards and regulatory bodies before use, on-sale or application and to use or apply same in accordance with all applicable standards, regulations and guidelines, with all manufacturers and/or WinLife PVC Windows recommendations and directions as well as with good practice.

12. Warranty

WinLife PVC Windows guarantee their products against defects arising solely from faulty workmanship or materials for a period of 7 years from the date of delivery, pending the following conditions:

- i) The product has been correctly installed in accordance with the relevant Australian Standards and recognized building practices. WinLife PVC Windows will not take responsibility if Goods and the Glass are installed out of level and if the Goods and the Glass have been installed by a third party.
- ii) The product has not been subject to any misuse, physical abuse, neglect or accident, however arising.
- iii) Was not damaged as a result of environmental conditions, natural disasters or other events beyond the control of WinLife PVC Windows.
- iv) The Goods and Glass have not been repaired modified or altered by a person who is not a WinLife PVC Windows employee.
- v) Immediately upon delivery, the Goods must be stored in a dry area and not in damp, moist, freshly plastered areas and out of direct weather.
- vii) Proof of purchase.

13. Other Terms and Conditions

No terms and conditions sought to be imposed by the Customer upon WinLife PVC Windows shall apply.

14. Recovery Costs

The Customer shall pay to WinLife PVC Windows the costs and expenses incurred by it or its solicitors, legal advisers, mercantile agents and other parties acting on WinLife PVC Windows' behalf in respect of anything instituted or being considered against the Customer whether for debt, possession of any Goods and Glass or otherwise.

15. Adornment

For the purpose of giving effect to the Customer's obligations under these Terms the Customer hereby irrevocably appoints the Credit Manager of WinLife PVC Windows from time to time as its attorney in all things.

16. Variation

Any variation or cancellation of these Terms or any order must be in writing. If there is any variation in specification after the order is placed, it must be submitted in writing and signed and dated by the customer. WinLife PVC Windows reserves the right to vary price in accordance to variation.

17. Defaults

(a) Upon any default or breach hereof by the Customer WinLife PVC Windows may (inter alia) retain all monies paid and/or cease further deliveries and recover from the Customer all loss of profits arising and/or at its discretion take immediate possession of any Goods and Glass not paid for without prejudice to any other rights and without being liable in any way to any party.

(b) The Customer agrees not to commence or continue or permit to be commenced or continued through it any suit or action against WinLife PVC Windows while the Customer is in default under any part of these Terms or in any of its dealings with Ekosan PVC trading as "Winlife PVC Windows".

(c) The customer is prohibited from contacting any Glaziers of WinLife PVC Windows and discussing any issues relating to the contract between the Customer and WinLife PVC Windows. If WinLife PVC Windows becomes aware that the Customer has contacted the Glazier(s) of WinLife PVC Windows, WinLife PVC Windows reserves its right to terminate the contract between the Customer and WinLife PVC Windows and claim any damages as a result of such contact from the Customer.

18. Severability

Any part hereof being a whole or part of a clause shall be capable of severance without affecting any other part of these Terms.

19. Customer Restructure

The Customer shall notify WinLife PVC Windows in writing of any change in its structure or management including any change in director, shareholder or management or change in partnership or trusteeship within 7 days of the date of any such change.

20. Jurisdiction

The Customer agrees that all contracts made with WinLife PVC Windows shall be deemed to be made in Victoria and the Customer agrees to submit to the jurisdiction of the appropriate Court nominated by WinLife PVC Windows

21. Credit Limit

The grant of any credit facility or nomination of any credit limit is an indication only of WinLife PVC Windows's intention at the time. WinLife PVC Windows can vary or withdraw any credit facility at any time at its discretion and without any liability to the Customer or any other party

22. Waiver

An election by WinLife PVC Windows not to exercise any of its rights arising as a result of any breach of these Terms shall not constitute a waiver of any rights of WinLife PVC Windows relating to any subsequent or other breach.

23. Notice

The Customer agrees that it shall be deemed to have notice of any change to these Terms immediately they are adopted by WinLife PVC Windows and whether or not the Customer has actual notice thereof. The Customer shall be bound by any terms and conditions of sale adopted by WinLife PVC Windows immediately they are so adopted and notwithstanding any other purported or pre-existing terms and conditions of Winlife PVC Windows.

24. Indemnity

The Customer indemnifies WinLife PVC Windows against any claim or loss arising from or related in any way to any contract or transaction between WinLife PVC Windows and the Customer or anything arising there from or arising as a result of or subsequent to any breach of these Terms.

25. Security For Payment

The Customer agrees on request to charge with payment of all monies owed to WinLife PVC Windows in favour of Winlife PVC Windows:

- (i) by way of a fixed charge all its books of account, financial records, goodwill, documents of title and current and later acquired real property and intellectual property; and
- (ii) by way of a floating charge, the whole of the Customers other undertaking, property and assets.

26. Forward Orders

If the Customer places a forward order the Customer agrees: a) to pay for so much of any order as is from time to time invoiced by Winlife PVC Windows b) no delay or failure to fulfill any part of any order shall entitle the Customer to cancel or vary any order or delay or reduce any payment.

27. Insolvency:

- a) If the Customer commits or is involved in any act of insolvency the Customer shall be deemed to be in default under these Terms.
- b) An act of insolvency is deemed to include bankruptcy, liquidation, receivership, administration or the like.

28. Packaging

The Customer agrees that it is solely responsible for ensuring that all materials used by it for packaging etc. comply fully with all relevant laws, regulations and standards etc applicable to that use.

29. Tooling

The Customer agrees that all tooling, material, industrial and/or intellectual property employed in the preparation for sale or production of any Goods and Glass shall be and remain the property of WinLife PVC Windows notwithstanding any contribution by the Customer relating thereto.

30. Customer Materials

The Customer agrees that any of its materials or property used by WinLife PVC Windows in the production of any Goods and Glass shall be at the Customer's risk in all things and be of merchantable quality and fit for the purpose.

31. Variations in Quantity

The Customer agrees to accept a permissible variation of quantity provided the variation does not exceed + or - 10% of the quantity ordered.

32. Abnormal payments:

The Customer agrees to pay an administration fee of 2% (calculated on the amount paid) on any payment which is made other than as provided in clause 1. Hereof which fee is agreed as the liquidated cost of processing such abnormal payments.