

GLASS BLOCKS QUEENSLAND PTY LTD – TERMS AND CONDITIONS OF TRADE

1. Definitions

- 1.1 “Glass Blocks Queensland” hereinafter referred to as “GBQ” means Glass Blocks Queensland Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of Glass Blocks Queensland Pty Ltd.
- 1.2 “Client” means the person/s ordering the Works as specified in any invoice, document or order, and if there is more than one, Client is a reference to each Client jointly and severally.
- 1.3 “Works” means all works or Materials supplied by GBQ to the Client at the Client’s request from time to time (where the context so permits the terms “Works” or “Materials” shall be interchangeable for the other).
- 1.4 “Price” means the price payable for the Works as agreed between GBQ and the Client in accordance with Clause 4 below.

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 delivery of any Works.
- 2.2 These Terms and Conditions may only be amended with GBQ’s consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and GBQ.
- 2.3 In the event that the Materials and/or Works provided by GBQ are the subject of an insurance claim that the Client has made, then the Client shall be responsible for the payment of any monies payable to the insurance company and agrees to honour their obligation for payment for such transactions invoiced by GBQ and shall ensure payment is made by the due date irrespective of whether the insurance claim is successful.

3. Change in Control

- 3.1 The Client shall give GBQ 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, email address or business practice). The Client shall be liable for any loss incurred by GBQ as a result of the Client’s failure to comply with this Clause.

4. Price and Payment

- 4.1 At GBQ’s sole discretion the Price shall be either:
 - (a) as indicated on invoices provided by GBQ to the Client in respect of Works performed or Materials supplied; or
 - (b) GBQ’s quoted price (subject to Clause 4.2) which shall be binding upon GBQ provided that the Client shall accept GBQ’s quotation in writing within the fourteen (14) or ninety (90) day period as specified in the quotation.
- 4.2 GBQ reserves the right to change the Price:
 - (a) if a variation to the Materials which are to be supplied is requested; or
 - (b) if a variation to the Works originally scheduled (including any applicable plans or specifications) is requested; or
 - (c) where additional Works are required due to the discovery of hidden or unidentifiable difficulties (including but not limited to limitations to accessibility to the work site, any prerequisite work by a third party not being completed, delays in raw materials from GBQ’s suppliers, etc) which are only discovered on commencement of the Works; or
 - (d) in the event of increases to GBQ in the cost of labour or materials (including but not limited to overseas transactions that may increase as a consequence of variations in

foreign currency rates of exchange and/or international freight and insurance charges) which are beyond GBQ's control.

- 4.3 At GBQ's sole discretion a non-refundable deposit may be required.
- 4.4 Time for payment for the Works being of the essence, the Price will be payable by the Client on the date/s determined by GBQ, which may be:
- (a) prior to the delivery of the Materials; or
 - (b) on completion of the Works (at GBQ's sole discretion); or
 - (c) by way of progress payments in accordance with GBQ's specified progress payment schedule. Such progress payment claims may include the reasonable value of authorised variations and the value of any Materials delivered to the site but not yet installed; or
 - (d) the date specified on any invoice or other form as being the date for payment; or
 - (e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by GBQ.
- 4.5 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (plus a surcharge of up to two and a half percent (2.5%) of the Price), or by any other method as agreed to between the Client and GBQ.
- 4.6 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to GBQ an amount equal to any GST GBQ must pay for any supply by GBQ under this or any other agreement for the sale of the Materials. 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. Delivery of the Works

- 5.1 Subject to Clause 5.2 it is GBQ's responsibility to ensure that the Works start as soon as it is reasonably possible.
- 5.2 The commencement date of the Works will be put back and/or the completion date extended by whatever time is reasonable in the event that GBQ claims an extension of time (by giving the Client written notice) where completion is delayed by an event beyond GBQ's control, including but not limited to any failure by the Client to:
- (a) make a selection; or
 - (b) have the site ready for the Works; or
 - (c) notify GBQ that the site is ready.
- 5.3 At GBQ's sole discretion the cost of delivery is either included in the Price or is in addition to the Price.
- 5.4 The Client must take delivery by receipt or collection of the Materials whenever they are tendered for delivery. In the event that the Client is unable to take delivery of the Materials as arranged then GBQ shall be entitled to charge a reasonable fee for redelivery and/or storage.
- 5.5 GBQ may deliver the Works by separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these Terms and Conditions.
- 5.6 Any time or date given by GBQ to the Client is an estimate only. GBQ shall not be liable for any loss or damage whatsoever due to failure by GBQ to deliver the Works (or any part thereof) promptly or at all, where due to circumstances beyond the reasonable control of GBQ.

6. Risk

- 6.1 If GBQ retains ownership of the Materials under Clause 8 then:
- (a) where GBQ is supplying Materials only, all risk for the Materials shall immediately pass to the Client on delivery and the Client must insure the Materials on or before delivery.

Delivery of the Materials shall be deemed to have taken place immediately at the time that either:

- (i) the Client or the Client's nominated carrier takes possession of the Materials at GBQ's address; or
 - (ii) the Materials are delivered by GBQ or GBQ's nominated carrier to the Client's nominated delivery address (even if the Client is not present at the address).
- (b) where GBQ is to both supply and install Materials then GBQ shall maintain a contract works insurance policy until the Works are completed. Upon completion of the Works all risk for the Works shall immediately pass to the Client.
- 6.2 Notwithstanding the provisions of Clause 6.1 if the Client specifically requests GBQ to leave Materials outside GBQ's premises for collection or to deliver the Materials to an unattended location then such materials shall always be left at the sole risk of the Client and it shall be the Client's responsibility to ensure that the Materials are insured adequately or at all. In the event that such Materials are lost, damaged or destroyed then replacement of the Materials shall be at the Client's expense.
- 6.3 The Client acknowledges that variations of colour, shade and grain are inherent in all kiln fired products and glass. While every effort will be taken by GBQ to match colour, shade or clarity of product, GBQ shall not be liable for any loss, damages or costs howsoever arising resulting from any variation in colour, shade or clarity between batches of product or sale samples and the final product supplied.
- 6.4 GBQ gives no guarantee (expressed or implied) against cracking, chipping or scratching that may occur that is beyond GBQ's control due to the nature of the product at the time of installation, therefore it is recommended that the Client allows for extra product for such breakages.
- 6.5 Holes, cut-outs and cutting of the Materials may weaken the strength of the Materials and although unlikely, cracking may occur. GBQ accepts no responsibility for cracks occurring after such Materials (that are subject to holes and cut-outs) are installed unless a toughened glass is used.

7. Access

- 7.1 The Client shall ensure that GBQ has clear and free access to the work site at all times to enable them to undertake the Works. GBQ 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 GBQ.

8. Title

- 8.1 GBQ and the Client agree that ownership of the Materials shall not pass until:
- (a) the Client has paid GBQ all amounts owing to GBQ; and
 - (b) the Client has met all of its other obligations to GBQ.
- 8.2 Receipt by GBQ 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.
- 8.3 It is further agreed that:
- (a) until ownership of the Materials passes to the Client in accordance with Clause 8.1 the Client is only a bailee of the Materials and unless the Materials have become fixtures must return the Materials to GBQ on request.
 - (b) the Client holds the benefit of the Client's insurance of the Materials on trust for GBQ and must pay to GBQ the proceeds of any insurance in the event of the Materials being lost, damaged or destroyed.
 - (c) the production of these Terms and Conditions by GBQ shall be sufficient evidence of GBQ's rights to receive the insurance proceeds direct from the insurer without the need for any person dealing with GBQ to make further enquiries.

- (d) the Client must not sell, dispose or otherwise part with possession of the Materials other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Materials then the Client must hold the proceeds of any such act on trust for GBQ and must pay or deliver the proceeds to GBQ on demand.
- (e) the Client should not convert or process the Materials 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 GBQ and must sell, dispose of or return the resulting product to GBQ as it so directs.
- (f) unless the Materials have become fixtures, the Client irrevocably authorises GBQ to enter any premises where GBQ believes the Materials are kept and recover possession of the Materials.
- (g) GBQ may recover possession of any materials in transit whether or not delivery has occurred.
- (h) the Client shall not charge or grant an encumbrance over the Materials nor grant nor otherwise give away any interest in the Materials while they remain the property of GBQ.
- (i) GBQ may commence proceedings to recover the price of the Materials sold notwithstanding that ownership of the Materials has not passed to the Client.

9.0 Personal Property Securities Act 2009 (“PPSA”)

- 9.1 In this clause financing statement, financing change statement, security agreement and security interest has the meaning given to it by the PPSA.
- 9.2 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 Materials that have previously been supplied and that will be supplied in the future by GBQ to the Client.
- 9.3 The Client undertakes to:
 - (a) promptly sign any further document and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which GBQ 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 Clause 9.3(a)(i) or 9.3(a)(ii).
 - (b) indemnify, and upon demand reimburse, GBQ 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 Materials charged thereby.;
 - (c) not register a financing change statement in respect of a security interest without the prior written consent of GBQ;
 - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Materials in favour of a third party without the prior written consent of GBQ; and
 - (e) immediately advise GBQ of any material change in its business practices of selling the Materials which would result in a change in the nature of proceeds derived from such sales.
- 9.4 GBQ 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.
- 9.5 The Client hereby waives its rights to receive notices under Sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.

- 9.6 The Client waives its rights as a grantor and/or a debtor under Sections 142 and 143 of the PPSA.
- 9.7 Unless otherwise agreed to in writing by GBQ, the Client waives its right to receive a verification statement in accordance with Section 157 of the PPSA.
- 9.8 The Client shall unconditionally ratify any actions taken by GBQ under Clauses 9.3 to 9.5.
- 9.9 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.

10. Security and Charge

- 10.1 In consideration of GBQ agreeing to supply the Materials, 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).
- 10.2 The Client indemnifies GBQ from and against all GBQ's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising GBQ's rights under this clause.
- 10.3 The Client irrevocably appoints GBQ and each director of GBQ as the Client's true and lawful attorney's to perform all necessary acts to give effect to the provisions of this Clause 10 including, but not limited to, signing any document on the Client's behalf.

11. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)

- 11.1 The Client must inspect all Materials on delivery (or the Works on completion) and must within seven (7) days of delivery notify GBQ in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Client must notify any other alleged defect in the Materials/Works as soon as reasonably possible after any such defect becomes evident. Upon such notification the Client must allow GBQ to inspect the Materials or to review the Works provided.
- 11.2 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).
- 11.3 GBQ acknowledges that nothing in these Terms and Conditions purports to modify or exclude the Non-Excluded Guarantees.
- 11.4 Except as expressly set out in these Terms and Conditions or in respect of the Non-Excluded Guarantees, GBQ makes no warranties or other representations under these Terms and Conditions including but not limited to the quality or suitability of the Materials/Works. GBQ's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 11.5 If the Client is a consumer within the meaning of the CCA, GBQ's liability is limited to the extent permitted by Section 64A of Schedule 2.
- 11.6 If GBQ is required to replace any Materials under this Clause or the CCA, but is unable to do so, GBQ may refund any money the Client has paid for the Materials.
- 11.7 If GBQ is required to rectify, re-supply or pay the costs of re-supplying the Works under this Clause or the CCA, but is unable to do so, then GBQ may refund any money the Client has paid for the Works but only to the extent that such refund shall take into account the value of Works and Materials which have been provided to the Client which were not defective.
- 11.8 If the Client is not a consumer within the meaning of the CCA, GBQ's liability for any defect or damage in the Materials is:
 - (a) limited to the value of any express warranty or warranty card provided to the Client by GBQ at GBQ's sole discretion;
 - (b) limited to any warranty to which GBQ is entitled, if GBQ did not manufacture the Materials;

- (c) otherwise negated absolutely.
- 11.9 Subject to this Clause 11, returns will only be accepted provided that:
 - (a) the Client has complied with the provisions of Clause 11.1; and
 - (b) GBQ has agreed that the Materials are defective; and
 - (c) the Materials are returned within a reasonable time at the Client's cost (if that cost is not significant); and
 - (d) the Materials are returned in as close a condition to that in which they were delivered as possible.
- 11.10 Notwithstanding Clauses 11.1 to 11.9 but subject to the CCA, GBQ 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 Materials;
 - (b) the Client using the Materials for any purpose other than that for which they were designed;
 - (c) the Client continuing to use any Materials after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
 - (d) interference with the Works by the Client or any third party without GBQ's prior approval;
 - (e) the Client failing to follow any instructions or guidelines provided by GBQ;
 - (f) fair wear and tear, any accident, or act of God.
- 11.11 GBQ may in its absolute discretion accept non-defective Materials (except for custom-made frames) for return in which case GBQ may require the Client to pay handling fees of up to fifteen percent (15%) of the value of the returned Materials plus any freight costs.

12. Intellectual Property

- 12.1 Where GBQ has designed, drawn, written plans or a schedule of Works or created any products for the Client, then the copyright in all such designs, drawings, documents, plans, schedules and products shall remain vested in GBQ, and shall only be used by the Client at GBQ's discretion.
- 12.2 The Client warrants that all designs, specifications or instructions given to GBQ will not cause GBQ to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify GBQ against any action taken by a third party against GBQ in respect of any such infringement.
- 12.3 The Client agrees that GBQ may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings, plans or products which GBQ has created for the Client.

13. Default and Consequences of Default

- 13.1 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 GBQ's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 13.2 If the Client owes GBQ any money the Client shall indemnify GBQ from and against all costs and disbursements incurred by GBQ in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, GBQ's contract default fee, and bank dishonour fees).
- 13.3 Without prejudice to any other remedies GBQ may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions GBQ may suspend or terminate the supply of Works to the Client. GBQ will not be liable to the Client for any loss or damage the Client suffers because GBQ has exercised its rights under this Clause.

- 13.4 Without prejudice to GBQ's other remedies at law GBQ shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to GBQ shall, whether or not due for payment become immediately payable if:
- (a) any money payable to GBQ becomes overdue, or in GBQ's opinion the Client will be unable to make a payment when it falls due;
 - (b) the Client becomes insolvent or bankrupt, 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.

14. Cancellation

- 14.1 GBQ may cancel any contract to which these Terms and Conditions apply or cancel delivery of Works at any time before the Works are commenced by giving written notice to the Client. On giving such notice GBQ shall repay to the Client any sums paid in respect of the Price, less any amounts owing by the Client to GBQ for Works already performed. GBQ shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 14.2 In the event that the Client cancels the delivery of the Works the Client shall be liable for any and all loss incurred (whether direct or indirect) by GBQ as a direct result of the cancellation (including but not limited to any loss of profits).
- 14.3 Cancellation of orders for products made to the Client's specifications, or for non-stockist items, will definitely not be accepted once production has commenced, or an order has been placed.

15. Privacy Act 1988

- 15.1 The Client agrees for GBQ to obtain from a credit reporting agency a credit report containing personal credit information about the Client in relation to credit provided by GBQ.
- 15.2 The Client agrees that GBQ may exchange information about the Client with those credit providers either named as trade referees by the Client or named in a consumer credit report issued by a credit reporting agency 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.
- The Client understands that the information exchanged can include anything about the Client's creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act 1988.
- 15.3 The Client consents to GBQ being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
- 15.4 The Client agrees that personal credit information provided may be used and retained by GBQ for the following purposes (and for other purposes as shall be agreed between the Client and GBQ or required by law from time to time):
- (a) the provision of Works; and/or
 - (b) the marketing of Works by GBQ, its agents or distributors; and/or
 - (c) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Works; and/or
 - (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
 - (e) enabling the daily operation of the Client's account and/or the collection of amounts outstanding in the Client's account in relation to the Works.

- 15.5 GBQ may give information about the Client to a credit reporting agency for the following purposes:
- (a) to obtain a consumer credit report about the Client;
 - (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Client.
- 15.6 The information given to the credit reporting agency may include:
- (a) personal particulars (the Client's name, sex, address, previous addresses, date of birth, name of employer and driver's licence number);
 - (b) details concerning the Client's application for credit or commercial credit and the amount requested;
 - (c) advice that GBQ is a current credit provider to the Client;
 - (d) advice of any overdue accounts, loan repayments and/or any outstanding monies owing which are overdue by more than sixty (60) days, and for which debt collection action has been started;
 - (e) that the Client's overdue accounts, loan repayments and/or any outstanding monies are no longer overdue in respect of any default that has been listed;
 - (f) information that, in the opinion of GBQ, the Client has committed a serious credit infringement (that is, fraudulently or shown an intention not to comply with the Client's credit obligations);
 - (g) advice that cheques drawn by the Client for one hundred dollars (\$100.00) or more, have been dishonoured more than once;
 - (h) that credit provided to the Client by GBQ has been paid or otherwise discharged.

16. Dispute Resolution

- 16.1 If a dispute arises between the parties to this contract then either party shall send to the other party a notice of dispute in writing adequately identifying and providing details of the dispute. Within fourteen (14) days after service of a notice of dispute, the parties shall confer at least once, to attempt to resolve the dispute. At any such conference each party shall be represented by a person having authority to agree to a resolution of the dispute. In the event that the dispute cannot be so resolved either party may by further notice in writing delivered by hand or sent by certified mail to the other party refer such dispute to arbitration. Any arbitration shall be:
- (a) referred to a single arbitrator to be nominated by the President of the Institute of Arbitrators Australia; and
 - (b) conducted in accordance with the Institute of Arbitrators Australia Rules for the Conduct of Commercial Arbitration.

17. Compliance with Laws

- 17.1 The Client and GBQ shall comply with the provisions of all Australian Standards, statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Works.
- 17.2 The Client shall obtain (at the expense of the Client) all licences and approvals that may be required for the Works.
- 17.3 The Client agrees that the site will comply with any occupational health and safety laws relating to building/construction sites and any other relevant safety standards or legislation.

18. Building and Construction Industry Payments Act 2004

- 18.1 At GBQ's sole discretion, if there are any disputes or claims for unpaid Materials and/or Works then the provisions of the Building and Construction Industry Payments Act 2004 of Queensland may apply.

18.2 Nothing in this agreement is intended to have the effect of contracting out of any provisions of the Building and Construction Industry Payments Act 2004 of Queensland, except to the extent permitted by the Act where applicable.

19. General

19.1 The failure by GBQ to enforce any provision of these Terms and Conditions shall not be treated as a waiver of that provision nor shall it affect GBQ'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.

19.2 These Terms and Conditions and any contract to which they apply shall be governed by the laws of Queensland in which GBQ has its principal place of business, and are subject to the jurisdiction of the courts in Queensland.

19.3 Subject to Clause 11, GBQ 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 GBQ of these Terms and Conditions (alternatively GBQ's liability shall be limited to damaged which under no circumstances shall exceed the Price of the Works).

19.4 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 GBQ nor to withhold payment of any invoice because part of that invoice is in dispute.

19.5 GBQ may licence or sub-contract all or any part of its rights and obligations without the Client's consent.

19.6 The Client agrees that GBQ may amend these Terms and Conditions at any time. If GBQ makes a change to these Terms and Conditions, then that change will take effect from the date on which GBQ notifies the Client of such change. The Client will be taken to have accepted such changes if the Client makes a further request for GBQ to provide any Works to the Client.

19.7 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.

19.8 The Client warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates a binding and valid legal obligation on it.