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## Schedule B – General Terms & Conditions

### 1. Definitions

- 1.1. "Agreement" means this Glass Purchase Agreement between Glasshape and the Customer.
- 1.2. "Applicable Standard" means the standard set out in Schedule A.
- 1.3. "Contract Schedule" means the estimated dates for performing certain key milestones, as set out in Schedule A.
- 1.4. "Contract Schedule" means the estimated dates for performing certain key milestones, as set out in Schedule A.
- 1.5. "Customer" (sometimes known as a client, buyer, or purchaser) means the recipient of a good, service, product or an idea - obtained from Glasshape via a financial transaction or exchange for money or some other valuable consideration.
- 1.6. "Date of Shipment" means the date of the air waybill, bill of lading, or notification of dispatch as the case may be.
- 1.7. "Documentation" means all documentation supplied, from time to time, by Glasshape in respect to the Goods, including installation guides, quality assurance guidelines, care and maintenance guidelines. A reference to Documentation means the latest revision of the relevant Documentation.
- 1.8. "Glasshape" means Glasshape Australia Pty Ltd ABN 40 160 852 111.
- 1.9. "Goods" means the fabricated glass products, and related items and services that Glasshape will supply to the Customer, as more fully described in Schedule A and Schedule C.
- 1.10. "Measurements" means the exact dimensions (allowing for tolerances described in AS/NZS 4667 or any other standard or other relevant document prescribed in Schedule A) of the Goods that Glasshape shall supply.
- 1.11. "Plans" means the detailed plans referred to in Schedule A, prepared or approved by the Customer and forming the basis for Glasshape's quotation to the Customer.
- 1.12. "Specifications" means the specifications set out in Schedule C and the Measurements approved by the Customer.

### 2. Price

- 2.1. Except as expressly permitted by this Agreement, the price specified in Schedule A is firm and fixed. Quotations remain valid for 30 days, unless otherwise agreed.
- 2.2. The price includes on-site Measurements provided Schedule A specifies that this is to be Glasshape's responsibility. In that case, the price also includes Glasshape's travel and accommodation costs. Notwithstanding the foregoing, Glasshape may increase the price to reflect any material differences between the window numbers and sizes upon which Glasshape based its price, and the actual number of windows and sizes that Glasshape is required to measure on the Customer's site.
- 2.3. Where the contract includes printing, unless specified otherwise in Schedule A the price is for printing with standard (BGWORK) colours available for ceramic printing and does not include specifically mixed colours.
- 2.4. The price includes Glasshape's cost to test (or retest) the Goods to the applicable standard and to the satisfaction of the applicable classification society or certifying body (if any) specified in Schedule A and Schedule C, if in Glasshape's opinion such testing (or retesting) is required for the Goods. Glasshape shall pay the cost of the tests and the cost of the classification society or certifying body witnessing such tests. Schedule A sets out the types of tests and the maximum number of tests that Glasshape has included in the price. If the classification society or certifying body requires more tests or different types of tests than Glasshape had costed for, Glasshape shall submit a quotation for the additional costs that the additional tests shall incur. The Customer and Glasshape shall agree upon the

additional costs before any extra testing commences. The Customer shall reimburse Glasshape for the cost of conducting such additional tests as per the agreed quotation terms and conditions.

- 2.5. The price is based upon the Plans. That is to say, Glasshape quoted off the Plans. If the Customer changes the Plans, the Customer agrees that such change may alter the price of the Goods, the quantity of Goods supplied and the Contract Schedule. Any change to the Plans shall (subject to acceptance by Glasshape) be treated as a variation to the Agreement.
- 2.6. The price does not include any applicable excise taxes, sales taxes, use taxes, luxury taxes, ad valorem taxes, value added taxes, goods and services taxes or personal property taxes. The Customer shall be responsible for these taxes, where applicable, and if Glasshape is required to collect them from the Customer at point of sale, the Customer shall pay such taxes upon presentation of a duly rendered tax invoice by Glasshape.
- 2.7. Where the parties specify a currency other than New Zealand Dollars, Glasshape may increase the price to reflect a decline in the currency so specified by more than 5% against the New Zealand Dollar between the date of this Agreement and the relevant payment due date.

### 3. Shipping

- 3.1. The shipping terms and mode are specified in Schedule A. If no mode of shipping is specified, the mode of shipping shall be by sea.
- 3.2. Risk of loss or damage to the Goods shall pass from Glasshape to the Customer according to the shipping term nominated by the parties. The parties incorporate Incoterms 2010 by the International Chamber of Commerce, Paris France, which sets forth the rights and obligations of each party in respect to the agreed shipping term specified in Schedule A. If no shipping term is specified, then shipping shall be DAP (Delivered At Place) Incoterms 2010.
- 3.3. Ownership in, title to and property of the Goods remains with Glasshape until payment in full for the Goods and all sums due and owing by the Customer to Glasshape on any account has been made and received by Glasshape. Until payment for the Goods have been made by the Customer to Glasshape, the Customer holds the Goods as bailee for Glasshape.
- 3.4. Glasshape shall insure the Goods for their full replacement value until risk of loss or damage passes to the Customer. Upon the passage of risk of loss or damage to the Customer, insurance becomes the Customer's responsibility. Upon request, Glasshape shall furnish the Customer with evidence of insurance.
- 3.5. If the Customer requests any change to shipping, the Customer shall pay the additional cost of such change. The Customer shall pay any additional shipping costs due to any delay arising from circumstances described in clause 23.1.
- 3.6. If the crated final size of Goods exceed the maximum size allowed by the shipper/carrier for standard size freight, Glasshape shall submit a revised shipping quote to the customer prior to sending the goods. The Customer shall pay any extra costs due to crate size requirements.
- 3.7. The Customer should exercise extreme care in uncrating and unpacking the Goods to avoid damage. Glasshape is not responsible for any damage to the Goods after risk of loss and damage passes to the Customer, including without limitation, damage resulting from unloading, uncrating, unpacking and installation by the Customer.
- 3.8. Upon receipt of the Goods, the Customer shall within the inspection period specified in Schedule A (or, if no inspection period is specified, within 20 working hours) fully inspect the Goods for any damage or defects. The Customer shall advise Glasshape in writing with photos for evidence of any such damage or defects within the said inspection period after receipt of the Goods. Absent such notice, the Goods shall be deemed to have arrived free of any damage or defects. If the said goods are indeed damaged and the customer chooses to glaze the damaged glass without prior notification to Glasshape of the damage, then Glasshape accept no responsibility

for the said damage and the Goods shall be deemed to have arrived free of any damage or defects.

- 3.9. Glasshape may deliver the Goods in one or more consignments, as stated in Schedule A.
- 3.10. Although Glasshape will endeavour to deliver on time, Glasshape shall not be liable for any costs incurred to the customer due to late delivery.

#### **Personal Property Securities Act 2009 (Cth) (“PPSA”)**

- 3.11. Defined terms in this clause have the same meaning as given to them in the PPSA.
- 3.12. Glasshape and Customer acknowledge that this Agreement constitute a Security Agreement and give rise to a Purchase Money Security Interest (“PMSI”) in favour of Glasshape over the Goods supplied or to be supplied to the Customer as Grantor pursuant to this Agreement.
- 3.13. The Goods supplied or to be supplied under this Agreement fall within the PPSA classification of “Other Goods” acquired by the Customer pursuant to this Agreement.
- 3.14. Glasshape and the Customer acknowledge that Glasshape, as Secured Party, is entitled to register its interest in the Goods supplied or to be supplied to the Customer as Grantor under this Agreement on the PPSA Register as Collateral.
- 3.15. To the extent permissible at law, the Customer:
  - (a) waives its right to receive notification of or a copy of any Verification Statement confirming registration of a Financing Statement or a Financing Change Statement relating to a Security Interest granted by the Customer, as Grantor, to Glasshape.
  - (b) agrees to indemnify Glasshape on demand for all costs and expenses, including legal costs and expenses on a solicitor / client basis, associated with the:
    - (i) registration or amendment or discharge of any Financing Statement registered by or on behalf of Glasshape; and
    - (ii) enforcement or attempted enforcement of any Security Interest granted to Glasshape by the Customer.
  - (c) agrees that nothing in sections 130 and 143 of the PPSA will apply to this Agreement or the Security under this Agreement;
  - (d) agrees to waive its right to do any of the following under the PPSA:
    - (i) receive notice of removal of an Accession under section 95;
    - (ii) receive notice of an intention to seize Collateral under section 123;
    - (iii) object to the purchase of the Collateral by the Secured Party under section 129;
    - (iv) receive notice of disposal of Collateral under section 130;
    - (v) receive a Statement of Account if there is no disposal under section 132(4);
    - (vi) receive a Statement of Account under section 132(3)(d) following a disposal showing the amounts paid to other Secured Parties and whether Security Interests held by other Secured Parties have been discharged.
    - (vii) receive notice of retention of Collateral under section 135;
    - (viii) redeem the Collateral under section 142; and
    - (ix) reinstate the Security Agreement under section 143.
- 3.16. 4.6. All payments received from the Customer must be applied in accordance with section 14(6)(c) of the PPSA

#### **4. The Contract Schedule**

- 4.1. The Contract Schedule sets out the parties' estimates at the date of quotation for starting and finishing key milestones. The Contract Schedule is subject to change and shall be confirmed upon acceptance and deposits being received. The Contract Schedule is provided for planning purposes only, and is not guaranteed nor shall be a representation or condition of this Agreement.
- 4.2. Glasshape shall use its reasonable efforts to achieve the Contract Schedule. Glasshape shall promptly notify the Customer if Glasshape anticipates a delay and shall use its reasonable efforts

to shorten the duration of the delay. Glasshape shall not be liable for any delays in meeting the Contract Schedule.

#### **5. Delays at the Customer's Request**

- 5.1. The Customer may request a delay in the Contract Schedule with Glasshape's approval, not to be unreasonably withheld. In that event, the parties shall agree upon a new Contract Schedule and the Customer will reimburse Glasshape for any costs that Glasshape reasonably and necessarily incurs because of such delay. For example, such delay may require the mode of shipment to change from sea freight to airfreight.
- 5.2. The Customer may not request a delay in the Contract Schedule once Glasshape starts manufacturing the Goods
- 5.3. Glasshape shall store the Goods for the Customer's account and risk if delivery cannot occur because of any delay by the Customer. The Customer shall pay interest on the price of the Goods at the rate of 1% per week, calculated from the date that the Goods were ready for shipment. The Customer shall also pay Glasshape's charges to store and insure the Goods. Charges shall commence after 20 days from the completion of the goods and all storage charges shall be paid in full before the delayed goods are released.

#### **6. Personal Property Securities Act 1999 (“PPSA”)**

- 6.1 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that:
  - 6.1.1 these terms and conditions constitute a security agreement for the purposes of the PPSA; and
  - 6.1.2 A security interest is taken in all Goods previously supplied by the Seller to the Customer (if any) and all Goods that will be supplied in the future by the Seller to the Customer.
- 6.2 The Customer undertakes to:
  - 6.2.1 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 register a financing statement or financing change statement on the Personal Property Securities Register;
  - 6.2.2 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 or releasing any Goods charged thereby;
  - 6.2.3 not register a financing change statement or a change demand without the prior written consent of the Seller; and
  - 6.2.4 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.
- 6.3 The Seller and the Customer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 6.4 The Customer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 6.5 Unless otherwise agreed to in writing by the Seller, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 6.6 The Customer shall unconditionally ratify any actions taken by the Seller under clauses 7.1 to 7.5.

#### **7. Payment**

- 7.1. The payment terms are specified in Schedule A.
- 7.2. Prompt payment shall be deemed a material condition and the Customer's late payment shall be deemed a material breach of such condition. In relation to the payment terms, time is of the essence. The Customer must make all payments by the due dates specified in Schedule A. The Customer shall not delay payment for any reason including without limitation, construction delays, installation delays, delays requested by the Customer's client or delays in receiving payment from the Customer's client.
- 7.3. Glasshape may suspend the performance of its obligations until payment is received.
- 7.4. Glasshape shall issue an invoice reasonably prior to each due date to allow the Customer to pay the invoice by the due date. Interest on overdue invoices shall accrue from the date when payment becomes due daily until the date of payment at a rate of 2.5% per calendar month and such interest shall compound monthly at such a rate after as well as before any judgment.
- 7.5. The Customer shall not withhold payment, make deductions or apply off sets unless it obtains Glasshape's written consent beforehand.
- 7.6. In the event that a Customer requests to pay via a Credit Card, Debit Card or EFTPOS, Glasshape reserve the right to apply a 2.5% surcharge to the amount due to cover bank fees associated with these payment types. Due to specific security requirements from banks processing Credit Card, Debit Card or EFTPOS payments, Glasshape may require extra security identification such as photographic ID, driver's license and passport details. Glasshape reserve

the right to refuse Credit Card, Debit Card or EFTPOS payments should a Customer not agree to these specific security terms.

## 8. The Specifications

- 8.1. The Customer is responsible for reviewing the Specifications and ensuring that the Specifications are fit for the Customer's requirements, including performance levels and pressure requirements. If the Customer wishes to change the Specifications, it must submit a request for a variation pursuant to clause 15.
- 8.2. The Goods proposed in this contract may be based on previously witnessed tests performed by the supplier to meet the design pressures submitted by the Customer. Should further testing requirements for this project result in change to the specified goods, the customer must submit a request for a variation pursuant to clause 15.
- 8.3. The applicable standards for goods performance is noted in Schedule A. Glasshape is responsible for manufacturing glass to these applicable standards and tested by the relevant classification society or certifying body. If the glass does not conform to these standards, Glasshape shall remanufacture the glass, and re-test the glass before the relevant classification society or certifying body, all at no cost to the Customer.
- 8.4. Provided the Goods conform to the Applicable Standard set out in Schedule A, including any pressure requirements, Glasshape is not responsible for any failure of the Goods caused by an error in the Specifications that causes the Goods not to achieve the required performance levels, pressure requirements or other requirement.
- 8.5. Glasshape commits to comply with the Applicable Standards noted in this Agreement, as they exist on the date of signing. If such standards are subsequently changed, Glasshape reserves the right to increase the price of the Goods to compensate Glasshape for any additional costs incurred as a consequence of such change.
- 8.6. Unless otherwise agreed in writing, any references to "clear glass" (or similar descriptions such as "clarity") shall mean glass with no tint added and shall not be taken to refer to visual/optical clarity. The Customer acknowledges that untinted glass may have a green hue due to levels of iron in the glass. If a clear hue is required, this must be agreed in writing and will typically require a 'low iron' glass containing lower levels of iron.

## 9. Warranty and Customer acknowledgements

- 9.1. Subject to this Agreement, Glasshape warrants that the Goods shall conform to the Specifications and shall be substantially free of defects in materials and workmanship.
- 9.2. The warranty in clause 9.1 is subject to any warnings or cautions given by Glasshape prior to acceptance of the order. For example, if Glasshape advises that the Customer's desired Specifications may affect quality, Glasshape may state (and the Customer accepts) that the warranty is limited or excluded.
- 9.3. Warranty
  - 9.3.1. The warranty period for goods where the end use is in water craft, vehicles of any type or a structure capable of movement in its normal operation is 1 (one) year or until such time the goods are installed or glazed into their final position, whichever comes first,
  - 9.3.2. The warranty period for any insulated glass unit or any laminated glass unit where an insertion has been used (including switchable film) shall be 5 (five) years, unless such units fall into the category described in clause 9.3.1, in which case clause 9.3.1 applies
  - 9.3.3. The warranty period for all other goods unless specifically noted in Schedule A shall be 10 (Ten) years
  - 9.3.4. For the purposes of this clause, the commencement of the warranty period shall be
    - 9.3.4.1. upon notification that the goods are ready for dispatch in the case of an 'Ex Works' contract
    - 9.3.4.2. upon the date of delivery if delivery is included in the contract
    - 9.3.4.3. upon the date of installation if installation is included in the contract
    - 9.3.4.4. upon the date of payment if payment is made prior to the dates referred to in 9.3.4.1-3

- 9.4. Notwithstanding the foregoing, no warranty is given for goods which have not been paid for in full within 90 days of due date or the date of the warranty claim whichever shall be the earlier.
- 9.5. The warranty period for goods supplied under a warranty claim shall expire on the date the warranty period would have expired for the goods they replace.
- 9.6. The Customer shall notify Glasshape, in writing, of a warranty claim within seven days of the Customer's discovery of the circumstances giving rise to the claim. Glasshape shall not be responsible for any additional cost that might have been avoided had prompt notice been given by the Customer.
- 9.7. The Customer shall provide such information, including photos, as Glasshape may reasonably require to evaluate the warranty claim. Glasshape shall then review such information and respond with all due speed.
- 9.8. Glasshape shall use reasonable efforts to resolve a warranty claim as soon as possible. However, the Customer understands that response times will vary depending upon the nature of the Customer's claim, the location of the Goods and the availability of resources required by Glasshape. For example, response times are faster with flat glass than with curved glass.
- 9.9. All warranty claims are subject to Glasshape's approval. If Glasshape accepts the warranty claim, Glasshape shall, at its option, repair or replace the defective Goods or refund their purchase price. If Glasshape elects to repair the Goods, it shall use reasonable efforts to effect the repair on the Customer's site unless it is a repair that Glasshape determines must be made at Glasshape's factory. In respect to onsite repairs, Glasshape may do the repair, itself, or engage a third party to do the repair. The Customer shall not repair the Goods except with Glasshape's prior written approval. An unauthorised repair shall void the warranty. Where Glasshape approves a warranty claim but has not agreed to repair on the Customer's site, Glasshape may require the Customer to return the Goods at the Customer's expense to the location at which it originally purchased the Goods.
- 9.10. If Glasshape supplies replacement Goods, the shipping term shall be sea freight. The customer may choose air freight at its own cost, provided that the dimensions of the Goods meet airline size restrictions.
- 9.11. If Glasshape wishes to inspect and test the Goods that are the subject of the Customer's warranty claim, the Customer shall ship such Goods to Glasshape. Glasshape shall bear all freight costs.
- 9.12. Upon the approval of Glasshape, not to be unreasonably withheld, the Customer must dispose of the defective Goods in an environmentally appropriate manner within 10 working days of Glasshape's written approval.
- 9.13. This is a parts only warranty. The Customer shall dismantle and re-install the Goods at its cost. Deglazing and reglazing is the Customer's responsibility. Glasshape is not responsible for associated costs, such as the cost to replace and reinstall interior or exterior trimming or cladding or the cost to do other work required during dismantling and reinstallation.
- 9.14. The Customer understands that the Goods, being glass, must be handled with care to avoid breakage. This warranty does not cover breakage unless the Customer is able to prove to Glasshape's reasonable satisfaction that the breakage occurred before the passage of risks under the relevant shipping terms or the breakage occurred because of an inherent defect or failure to conform to the Specifications.
- 9.15. The Customer acknowledges that, if the glass is curved or bent: (a) fine distortions or markings (such as stretch marks) may appear on or in the glass; (b) glass may show the presence of "roller wave" (a surface distortion produced by a reduction in surface flatness) or "roller pickup" (which can be shown as small imprints in the surface); (c) there may be some degree of visual distortion that will vary depending the glass type, thickness, and shape.
- 9.16. The Customer acknowledges that strain patterns and iridescence may become apparent under certain lighting conditions or viewing angles, including elevated levels of visual haze appearance in Switchable glass.
- 9.17. The Customer acknowledges and agrees that the characteristics described in clauses 9.15 and 9.16 (and any similar characteristics) are not defects, but are a result of manufacturing processes (including bending, heat-strengthening, toughening, etc) and are acceptable characteristics of such glass. The presence of distortions, marks or other manufacturing effects shall not, directly or indirectly, give rise to a warranty claim or any other claim whatsoever against Glasshape.
- 9.18. When Glasshape accepts a warranty claim, it is without prejudice to disputing the claim's validity as more information becomes available to Glasshape. Glasshape may provisionally accept a warranty claim subject to further inspection and testing of the allegedly defective



Goods. If, following such further inspection and testing, Glasshape reasonably determines that the Customer's warranty claim is not valid, the Customer shall reimburse Glasshape for all costs incurred, including validation costs.

- 9.19. Glassshape's warranty does not cover and is void in any of the following circumstances: (a) Payment for the goods is not made in full; (b) The warranty claim relates to or arises from normal wear and tear; (c) The Goods were damaged as a result of faulty installation unless Glasshape was responsible for installation; (d) The Goods were mishandled, misused, neglected, damaged, abused or involved in an accident; (e) The Goods were improperly repaired or maintained; (f) The Goods were modified; (g) The Customer, or the Customer's client, did not follow any warnings, installation instructions, safety instructions, maintenance instructions, recommendation, or care and use instructions in the Documentation; (h) The Goods were damaged physically after risk of loss passed from Glasshape to the Customer; (i) The Goods were used for purposes other than for which they were designed and specified; and/or (j) The Goods conformed to the Specifications but the Specifications were faulty, incomplete or incorrect; (k) Laminated glass or insulated glass unit edges have been exposed to moisture, cleaning chemicals or any other elements.
- 9.20. Notwithstanding the warranty exclusions set out in clause 9.19, Glassshape's warranty does not cover and is void if the goods are damaged as result of any sealant, glue, adhesive, paint or any other product applied to the glass surfaces or edges regardless of whether specified or recommended by Glasshape.
- 9.21. Delamination defects shall not be the subject of any warranty claim unless the delamination is greater than 5% of the glass surface area.
- 9.22. This is an express warranty. Glassshape's only obligation is to repair, replace or refund the purchase price of such parts or Goods upon the acceptance of a valid warranty claim by Glasshape. Glasshape disclaims any other express or implied warranties or guarantees, including warranties or guarantees of merchantability or fitness for purpose, to the maximum extent permitted by law. If you are acquiring the Goods for business/trade purposes, you agree that the Consumer Guarantees Act 1993 does not apply.
- 9.23. The Customer is solely responsible for determining whether the Goods are suitable for the Customer's purposes and will meet the Customer's performance expectations. The Customer warrants that it has made its own independent evaluation of the suitability and specifications of the Goods (including the Applicable Standard), and that it has not relied upon any representation, warranty (except as expressly provided under this Agreement), statement, opinion, information or advice from Glasshape in acquiring the Goods. The Customer acknowledges that the Goods are bought relying solely upon the Customer's skill and judgement.
- 9.24. If the contract includes printing (called "the Printing") the Customer shall provide the Printing copy in PDF, AI, PSD, EPS, TIFF, RAW or JPEG format unless otherwise agreed. The Customer warrants that no Printing ordered by the Customer shall be indecent, improper, blasphemous, libellous, scandalous, a breach of privacy, a breach of copyright or in breach of any other persons intellectual property (called "the Customer's Warranty").
- 9.25. If Glasshape considers in its sole discretion that any material which the Customer may require to be printed may be in breach of the Customer's Warranty Glasshape may refuse to proceed with the Printing in which case the Customer shall reimburse Glasshape for all costs Glasshape has incurred to that date.
- 9.26. Notwithstanding the foregoing Glasshape shall not be responsible to check that the printing does not breach the Customer's Warranty and the Customer fully indemnifies Glasshape for all liability, damages, and legal costs that may be incurred by Glasshape arising from any breach of the Customer's Warranty, or defending any legal action in relation to copyright infringement or breach of another person's intellectual property whether or not such infringement or breach is proven or not.
- 9.27. Glassshape shall not be liable for any loss or damage of the supplied artwork files provided by the Customer who shall retain a back-up copy.
- 9.28. The Customer acknowledges that slight fading or change of colours may occur from general wear and tear and excessive UV exposure over the period of the Warranty. The Customer acknowledges that a change in colour or density of up to 10% does not give cause to warranty claim.
- 9.29. The Customer acknowledges that colour variation may occur between submission samples and actual goods delivered due to variation in glass types, batches, climatic conditions and lighting levels. Colours may also vary between batches. The Customer acknowledges that these variations do not give cause to a warranty claim.
- 9.30. Copyright in any artwork, design or other intellectual property produced by Glasshape shall remain Glasshape's exclusive property.

- 9.31. No warranty is given in respect of spontaneous glass fractures or glass breakages as result of thermal differentials.

## 10. NsureGlaze®

- 10.1. The Customer acknowledges that NsureGlaze® is not an insurance product.
- 10.2. NsureGlaze® is an optional term which may be offered to the Customer as part of the glass supply contract.
- 10.3. If the NsureGlaze® option is offered in Schedule A and is selected by the Customer, then the terms in this clause shall apply.
- 10.4. Customers must physically sign the NsureGlaze® offer for the product to be added to their project.
- 10.5. NsureGlaze® supplies replacement glass that has been accidentally damaged during glazing by a suitably qualified and experienced glazer. Glassshape reserves the right to request photos of damaged glass or access the site to inspect damaged glass. Glassshape reserves the right to refuse cover of damaged product if it has reasonable grounds to suspect that the damage has occurred through deliberate actions or other than during glazing.
- 10.6. The term 'glazing' is the act of installing the glass into or onto its frame.
- 10.7. Replacement glass shall be produced through normal processing lead times.
- 10.8. Although all care and consideration is made, Glassshape cannot guarantee exact colour match between replacement glass and originals. Glass colours can vary between batches and suppliers of the raw materials.
- 10.9. NsureGlaze® will replace glass like for like. Any requests from the customer to alter sizes or specifications in any form will void the replacement offer
- 10.10. NsureGlaze® covers the cost of replacement glass that has been damaged during glazing, to the point of original supply of the contract.
- 10.11. Where shipping was included in the original supply contract, sea freight is the only method covered by NsureGlaze®. Should airfreight be requested by the client, this will be charged to the client and will need to be prepaid before the glass is dispatched.
- 10.12. NsureGlaze® does not cover the cost of unpacking, glazing, labour, access or any other costs associated with the re-glazing process.
- 10.13. All claims must be made within 30 days from time of delivery. Glassshape reserve the right to reject any claims received after 30 days from delivery.
- 10.14. Glassshape take no responsibility in any form for penalties incurred by the client as result of damaged or late delivered glass.
- 10.15. The cost of NsureGlaze® is determined by Glassshape on a case by case basis and is not negotiable.
- 10.16. Glassshape reserves the right to withdraw NsureGlaze® term at any time prior to a contract being signed by the customer and Glasshape.
- 10.17. Glassshape's other terms of trade apply to NsureGlaze®.

## 11. Liability

- 11.1. Glassshape's maximum liability, whether in contract, tort (including negligence) or otherwise, arising from or in relation to this Agreement or the Goods shall be limited to:
  - (a) replacing the goods or the supply of equivalent goods to the place of supply of the goods that are replaced or;
  - (b) the invoice value of the goods:
- 11.2. To the extent permitted by law under no circumstance shall Glassshape be liable for any incidental, special, indirect, consequential or punitive damages, including accidents, personal injury, loss of life, loss of or damage to any boat, vehicle, structure or other object in which the Goods are installed, collateral damage to any property including damage to trimmings, upholstery, fittings and appliances, other property damage, loss of profits, loss of revenues, loss of business, loss of operations, injury to reputation or loss of good will. Glassshape shall not be liable for death, personal injury or property damage resulting from, relating to, or caused by, the Goods. The Customer understands and agrees that all claims in the nature of products liability shall be its sole responsibility.
- 11.3. Notwithstanding any other term of this contract Glassshape will have no liability if the goods conformed to the specifications when tested in accordance with the Applicable Standard.

## 12. Cancellation

- 12.1. The Customer may cancel an order by notice before Glassshape starts manufacturing the Goods. In such event, the Customer shall

pay Glasshape for all work performed to the date of cancellation, reimburse Glasshape for the reasonable cost of any commitments that Glasshape is unable to break and for Glasshape's losses due to cancellation, calculated at 25% of the total contractual value of the project specified in schedule A (which the Customer agrees represents a reasonable pre-estimate of Glasshape's loss in that circumstance). Once Glasshape starts manufacturing the Goods, the Customer may not cancel the order.

- 12.2. Glasshape may cancel an order before it starts manufacturing the Goods. In such event, Glasshape shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 12.3. Glasshape may cancel all or any part of an order at any time (and shall not be liable for any loss or damage whatsoever arising from such cancellation), if: (a) the Customer breaches any provision of this Agreement and fails to cure such breach within 30 days after notice thereof; or (b) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into a meeting with creditors, makes an assignment for the benefit of its creditors, appoints a receiver, administrator, liquidator or similar person, otherwise seeks relief under any insolvency or bankruptcy law, or in Glasshape's sole opinion may be unable to meet its payments as they fall due.
- 12.4. In the event of cancellation by Glasshape pursuant to clause 12.3, and without prejudice to Glasshape's other rights, the Customer shall be liable for: (a) The value of all work performed, including both labour and materials, up to the date of cancellation, computed on a percentage of completion basis; (b) The value of Glasshape's outstanding commitments for labour and materials which Glasshape cannot break without penalty; (c) Glasshape's losses due to cancellation, calculated at 25% of the total contractual value of the project specified in schedule A (which the Customer agrees represents a reasonable pre-estimate of Glasshape's loss in that circumstance); and (d) Glasshape's other reasonable costs and expenses incurred as a result of cancellation (including legal expenses on a client-solicitor basis).

### 13. Moulds and Tooling

- 13.1. Glasshape retains ownership of all moulds, tooling and other materials that Glasshape manufactures and uses to produce the Goods.

### 14. Installation

- 14.1. Unless Schedule A indicates otherwise, this is a supply only contract. Installation is the Customer's responsibility and there is no formal acceptance procedure. The Customer shall be deemed to have accepted the Goods upon receipt, excepting only claims for damage and defects.
- 14.2. The Goods are custom manufactured to the unique Specifications supplied by the Customer. The Customer shall install the Goods in accordance with Glasshape's Documentation. Installation should only be undertaken by experienced marine glass installers with a thorough knowledge and understanding of marine glass installation methods and techniques, following Glasshape's Documentation.
- 14.3. Any damage to the Goods, or other property, during installation is the Customer's responsibility and shall void Glasshape's warranty. Without limiting the generality of the foregoing, Glasshape is not responsible for: (a) damage resulting from the use of sealants, solvents or other chemicals not expressly specified by Glasshape; (b) chips and breakage due to mishandling the Goods; (c) damage caused by forcing glass out of its natural shape such as by the use of clamping systems to hold the glass in an unnatural position while the adhesive cures; (d) damage resulting from the failure of the Customer to wait at least five days for the paint to dry around the perimeter of the space where the glass is to be installed; and (e) damage resulting from the failure of the Customer to wait at least five days after installation before further painting or retouching can be carried out around the perimeter of the space where the glass has been installed; (f) damage to surrounding substrates as a result of installing the Goods.
- 14.4. The Customer shall strictly comply with any instructions for installation, use, care and maintenance, trouble shooting, warnings and safety procedures provided by Glasshape. Where appropriate, the Customer shall pass any such instructions to its customer and the Customer shall use its best endeavours to ensure that its customer complies with such instructions. Glasshape shall not be liable for any costs or damages incurred by any person because of such person's failure to comply with such instructions.
- 14.5. Where the boat, structure or other project for which the Goods have been ordered is covered by construction insurance in favour of the Customer, the Customer shall ensure that Glasshape is included as an additional insured party under such insurance and is entitled to the benefit of the insurance.

### 15. Variations

- 15.1. At any time before Glasshape starts manufacturing the Goods, the Customer may request variations in the scope of supply or Specifications. Such request shall be in writing and include a full and accurate description of the variations. The Customer may not request a variation once Glasshape starts manufacturing the Goods.
- 15.2. Glasshape shall advise the Customer: (a) whether the variations can be made; (b) when the variations can be made; and (c) whether the variations will affect the price and if so, by how much and in whose favour.
- 15.3. If the Customer requests Glasshape to proceed with the variations, such variations shall become an integral part of the Agreement with the scope of supply, the Specifications, the price, the Contract Schedule and other terms modified accordingly. The parties will then validate the variations by both signing a written description of the variations, and the agreed terms.
- 15.4. Unless otherwise agreed, the instalment payment percentages specified herein shall be applied to the new price. Any instalments already paid shall be recomputed using the new price. The difference between the amount already paid and the amount as recomputed shall be immediately paid by the Customer to Glasshape, or by Glasshape to the Customer, whichever the case may be.
- 15.5. Where Glasshape will carry out the variation work on a time and materials basis, Glasshape's standard rates will apply.
- 15.6. The Customer will not be bound to accept or pay for any variations or modifications carried out by Glasshape unless the Customer and Glasshape shall have agreed upon such variations or modifications beforehand.

### 16. The Measurements

- 16.1. Before Glasshape sends over its staff, the Customer must confirm to Glasshape that the Customer has satisfied Glasshape Measurement Requirements set out in Schedule A. Glasshape may not make the visit until it receives such confirmation.
- 16.2. Glasshape shall use a 3D digital measuring device and shall supply the Measurements as digital CAD files using standard CAD software for this purpose. The Customer is responsible for using the same or compatible software to review and approve Glasshape's measurements. Notwithstanding the foregoing, Glasshape may provide manual templates for windows that are impossible to measure with its 3D digital measuring device because of the confined space.
- 16.3. The Customer shall provide Glasshape unobstructed site access during normal working hours to both the inside and the outside of the boat, structure or other project (as applicable).
- 16.4. After Glasshape staff returns to Glasshape's factory, Glasshape shall email the Measurements to the Customer for the Customer's approval. The Customer shall not unreasonably withhold its approval if the Measurements otherwise conform to the Plans and Specifications. The Customer must also indicate the ceramic black-out areas (if any) on the Measurements.
- 16.5. If the Customer alters the boat, structure or project or changes the Plans or Specifications after Glasshape has completed the Measurements, the Customer shall reimburse Glasshape for the cost of remeasuring at the Customer's site, if required. If such change also affects the description and quantity of Goods, the purchase price of the Goods or the Contract Schedule, the parties shall negotiate a variation to this Agreement.
- 16.6. Glasshape has built into the price quoted the cost of travel and accommodation and a specific number of days on the Customer's site for doing the Measurements. The Customer shall ensure that the boat, structure or project is ready to be measured before Glasshape arrives to do so. If Glasshape is delayed because the boat, structure or project is not ready for measurement, the Customer shall reimburse Glasshape for each day of delay at Glasshape's standard per diem rates and charges, including transportation and accommodation expenses. If Glasshape is required to make more than one visit to the Customer's site because of a delay by the Customer or one of its contractors or trades people, the Customer shall reimburse Glasshape for subsequent visits at Glasshape's standard per diem rates and charges, including transportation and accommodation expenses.
- 16.7. If the Customer is responsible for the Measurements, it may provide them in digital format or as manual templates, provided the dimensions are clear to Glasshape.
- 16.8. Glasshape take all care to ensure measurements taken are accurate. Glasshape however shall not be liable for costs incurred by the customer or related parties if the measurements that Glasshape took are found to be in error.



## 17. Relationship of the Parties

- 17.1. Glassshape and the Customer are independent contractors.
- 17.2. Glassshape is an independent supplier to the Customer. Glassshape is not a subcontractor to the Customer. Glassshape is not bound by any obligations or commitments that the Customer may have made to the Customer's client except as expressly incorporated herein. If the Customer is buying the Goods for resale, the Customer accepts full responsibility for resolving any claims made by its customer and indemnifies Glassshape against any such claims. The Customer's sole recourse against Glassshape is pursuant to this Agreement.
- 17.3. The Customer's client, if any, shall not be regarded as a third party beneficiary of this Agreement and shall have no right of action against Glassshape for any breach thereof.

## 18. Inspection of Goods

- 18.1. The Customer, or its agent, shall have a right to inspect the Goods at Glassshape's factory before shipment. Glassshape shall notify the Customer when the Goods are ready for inspection.
- 18.2. Within five days following receipt of Glassshape's notice, the Customer shall advise Glassshape whether or not it wishes to inspect the Goods. If the Customer fails to so advise Glassshape within such five day period, the Customer shall be deemed to have waived its right of inspection and Glassshape may proceed to package the Goods for shipment.
- 18.3. If the Customer waives its right of inspection, the Customer also waives the right to claim for any defects that an inspection would have otherwise revealed.
- 18.4. Whether or not the Customer inspects the Goods, the Customer agrees not to delay payment of the purchase price according to the payment terms.

## 19. Packaging

- 19.1. Glassshape shall package and label the Goods according to the packaging specifications set out in Schedule A.
- 19.2. Each consignment shall be accompanied by a detailed packing slip describing the contents and the quantities. Upon the Customer's request, Glassshape shall send a copy of the packing slip to the Customer by fax or email before shipment.
- 19.3. Glassshape shall also send the Customer the relevant shipping documents to enable the Customer to take delivery of the Goods, when required by the relevant shipping term nominated in Schedule A.
- 19.4. Glassshape shall not charge the Customer for packaging, packing or returnable pallets, crates and containers unless stated in Schedule A.

## 20. Technical Advice

- 20.1. Glassshape shall provide remote technical advice to the Customer during the warranty period. Glassshape shall provide such technical advice during Glassshape's normal business hours by telephone, fax or email. Such technical advice may include advice on glass handling and installation, assistance with repairs approved by Glassshape, care and maintenance tips.
- 20.2. Where Glassshape gives technical advice, Glassshape does so to provide helpful suggestions only. Glassshape has not inquired, nor does it know, all of the Customer's unique circumstances to make a professional judgement. Glassshape assumes no obligation or liability for any technical advice so given, except for such technical advice as Glassshape includes in its Documentation. The Customer accepts such technical advice entirely at its own risk. The Customer shall use its own judgement and not rely upon Glassshape's.

## 21. Confidential Information

- 21.1. Each party will keep strictly confidential all non-public information of the other party. Such information includes, without limitation, details about a party's business, properties, equipment, manufacturing methods, quality assurance procedures, intellectual property, Documentation, suppliers, clients, finances and accounts. Such information will not include information that is in the public domain or becomes generally known through no fault of the receiving party. This clause will survive the termination of this Agreement.

## 22. Compliance with Laws and Regulations

- 22.1. The Customer shall comply with all applicable laws and regulations in the countries where the Customer intends to use or sell the Goods. Specifically, and without limiting the generality of the foregoing, the Customer shall comply with all health and safety requirements and registration and approval requirements.
- 22.2. At the time the Customer places its order, it shall advise Glassshape of any such legal requirements to the extent they relate to the Specifications, the manufacturing process, labelling or packaging.

Glassshape shall use all reasonable efforts to comply with such requirements. Glassshape reserves the right to increase the price to cover the reasonable cost of complying with any such requirements. The Customer acknowledges that Glassshape shall be relying entirely upon the Customer's advice in respect to the legal requirements in the Customer's markets.

## 23. Force Majeure

- 23.1. Glassshape shall not be liable for any failure or delay resulting from circumstances beyond its reasonable control. Such circumstances include, without limitation: unavoidable delays in production; breakage or damage before or during delivery; delays or non-conformance by suppliers; shortages of materials; delays by the Customer; changes enacted by a classification society or certifying body; strikes and labour unrest; shipping delays; delays in procuring any required import/export documentation; war; acts of terrorism; government intervention; fire; flood; accident; natural disaster; or any other event commonly referred to as an "Act of God".

## 24. Non-Waiver

- 24.1. No failure by either party to insist upon strict performance of this Agreement or any delay in exercising any of its rights or remedies, shall constitute a waiver or variation of this Agreement or a waiver of any such right or remedy.

## 25. Entire Agreement

- 25.1. This Agreement represents the entire agreement between the parties hereto respecting the subject matter hereof. As such, it supercedes all previous agreements or understandings, whether verbal or written, pertaining to the same subject matter.
- 25.2. Any changes or modifications to this Agreement shall be valid only if made in writing and signed by both parties.
- 25.3. All sales by Glassshape to the Customer shall be subject to this Agreement. This Agreement overrides any other terms and conditions in conflict therewith, including those on the Customer's purchase order, if any.
- 25.4. Glassshape's agents and representatives have no authority to make any representations, statements, warranties, conditions or agreements that conflict with this Agreement. Any such unauthorised representations, statements, warranties, conditions or agreements shall not bind Glassshape nor shall they form a part of an Agreement, unless the parties sign a variation to that effect.

## 26. Priority of Schedules

- 26.1. In the event of a conflict, the schedules in this Agreement will take precedence in the following order of priority: Schedule A, Schedule B, Schedule C, Schedule D. The term set forth in the schedule having priority shall be deemed to control in the event of a conflict between two schedules to this Agreement. For the sake of clarification, even though the Purchase Order and the Plans are referred to in Schedule A, they shall have the same priority as Other Relevant Documents included in Schedule D.

## 27. Incorporation by Reference

- 27.1. Any document referred to in this Agreement shall be deemed incorporated herein by such reference. In the event of a conflict, the terms of this Agreement shall take priority.
- 27.2. A reference to a document shall be deemed a reference to the latest version of such document in effect at time of signing this agreement.
- 27.3. Any change in the name of a document incorporated by reference shall not affect its enforceability provided it is clear which new document was intended to supersede and replace the document expressly mentioned herein.

## 28. Notices

- 28.1. A party may deliver any notice required by this Agreement by hand. If a party delivers any notice by a recognised international air courier (e.g. FedEx, DHL, UPS), such delivery shall be deemed equivalent to delivery by hand. A party may send a notice to the other party at the address referred to at the start of this Agreement or such other address as the other party may designate in writing. A party may send a notice by first class airmail post, facsimile transmission, email or comparable means of communication.
- 28.2. The date of receipt of any notice delivered by hand shall be the date upon which such notice was hand delivered to the recipient. The date of receipt of any notice given by mail post shall be the 4th day after the sender mailed the notice. Proof that the sender addressed the envelope properly, paid the correct postage and did not receive the notice back shall be sufficient evidence that the sender gave notice. The date of receipt of any notice given by facsimile transmission, email or comparable means of communication shall be the date of transmission of such notice, provided: (a) the recipient acknowledges receipt; or (b) the giver of such notice sends a confirming copy by air mail post within 24 hours after transmission.

**29. Severability**

29.1. The parties have entered into this Agreement believing in good faith that it fully complies with all applicable laws. Each clause in this Agreement is severable in whole or in part. If a court of competent jurisdiction holds any clause to be illegal or unenforceable for any reason, the parties shall modify such clause, but only to the extent necessary to make it legal and enforceable. If modification is not possible without materially altering the intent of the clause, the parties shall sever such clause from this Agreement and renegotiate in good faith such other means to reflect their original intent. Notwithstanding such severance, the parties shall enforce the balance of this Agreement as if such severed clause was never a part thereof.

**30. Disputes**

30.1. In the event of any dispute arising out of or in connection with the present Agreement, the parties agree to submit the matter to settlement proceedings under the ICC ADR Rules. If the dispute has not been settled pursuant to the said Rules within 45 days following the filing of a Request for ADR or within such other period as the parties

may agree in writing, such dispute shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by a single arbitrator appointed in accordance with the said Rules of Arbitration.

30.2. The venue for settlement proceedings and arbitration proceedings is Sydney, Australia.

**31. Governing Law**

31.1. This Agreement is to be construed in accordance with the laws from time to time in the state of New South Wales, Australia and the parties submit to the jurisdiction of courts exercising jurisdiction there.

**32. Assignment**

32.1. Glasshape may assign, license or sub-contract all or any part of its rights and obligations by written notice to the Customer.

*- End of Schedule B -*

