

EUROPEAN WINDOW CO. PTY LTD TERMS AND CONDITIONS

1. Definitions

In these Terms and Conditions:

“**Australian Consumer Law**” as set out in Schedule 2 of the *Competition and Consumer Act 2010 (Cth)* and the corresponding provisions of State fair trading legislation;

“**Credit Provider**”, “**Personal Information**” and “**Sensitive Information**” have the meaning prescribed to them in the *Privacy Act 1988 (Cth)*;

“**Claim**” means any claim, action, demand or proceeding however arising (including under contract, statute, common law or equity);

“**Contract**” means the Supply and Install Contract entered into between European Window Co. and the Customer (referred to as ‘the Purchaser’ in the Contract);

“**Credit Application**” means any credit application between a Customer, the Guarantor (if any) and European Window Co., including the Guarantee and Indemnity contained therein;

“**Customer**” means a person or corporation (or any person acting on behalf of and with the authority of the Customer) seeking to acquire Products and/or Services from European Window Co. and where applicable includes the Customer as described on any quotation, invoice, work authorisation, Credit Application or other form as provided by European Window Co. to the Customer and, if the Customer consists of more than one person, each of them jointly and severally;

“**Delivery**” or “**delivered**” means, as the case may be:

- (a) the time when the Products are sent by European Window Co. to the Customer’s nominated address for delivery by whatever means; or
- (b) the time when the Product is collected by the Customer;

“**Equipment**” means any equipment used by European Window Co. in the provision of the Services, including any Equipment that is left at the Site in connection with the Services;

“**European Window Co.**” means European Window Co. Pty Ltd (ACN 666 564 343) its successors and assigns or any person acting on behalf of and with the authority of European Window Co.;

“**Guarantor**” means that person (or persons), or entity, who agrees to be liable for the debts of the Customer on a principal debtor basis;

“**Products**” means all goods, products and/or materials supplied by European Window Co. to the Customer and are as described on any Quote, Contract, invoice, work authorisation, Credit Application or other form as provided by European Window Co. to the Customer;

“**GST**” has the meaning given to it in the GST Act;

“**GST Act**” means *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*, as amended;

“**Intellectual Property Rights**” means all intellectual property rights (whether created before, on or after the date of this Agreement and whether registered or unregistered) in respect of copyright, any patents, trademarks, logos, designs, software, domain names, business or trade name, together with marketing concepts and designs, product knowledge, training systems and materials, protection of confidential information, circuit layouts, inventions, know-how, product or business concepts, details of product development, and any other identifiable result of intellectual endeavour, whether arising under statute or otherwise or any similar industrial property right or any right to, or application for registration of, any of them;

“**Loss**” includes the following, whether direct or indirect, special or consequential in nature:

- (a) loss, damage, costs (including legal costs on a solicitor and own client basis), action or expense of any kind; and

- (b) to the extent not covered in the preceding subclause, loss of profits, opportunity, use, revenue, goodwill, bargain, production, sales turnover, income, reputation (or damage to it), employment, corruption or destruction of data, customers, loss relating to or in connection with any other contract, business or anticipated savings, reduction in value, any delay or financing costs or increase in operating costs, or any other financial or economic loss; and

- (c) anything referred to in the preceding subclauses relating to or arising out of or in connection with:

- (i) personal injury (including death or disease) to the Customer;
- (ii) personal injury (including death or disease) to any third party; or
- (iii) loss of or damage to the property of European Window Co., the Customer or any third party; and
- (iv) a breach or non-compliance by European Window Co. or the Customer with any law;

“**Other Property**” means all present and after-acquired property of the Customer (except the Products) whether acquired alone or jointly as a tenant in common or as a joint tenant;

“**Personnel**” means the directors, officers, employees, contractors, suppliers, advisers or agents of a party, and in the case of the Customer, includes without limitation any builder or carpenter or other trade person engaged by them and any of their Personnel;

“**Plans**” means any drawings, structural or other plans, specifications, designs and/or documents, instructions or information (including verbal instructions or descriptions) provided by the Customer (or its Personnel) to European Window Co. or otherwise provided by European Window Co. to the Customer;

“**PPSA**” means the *Personal Property Securities Act 2009 (Cth)*, and its regulations as amended and in force from time to time;

“**PPS Register**” means the Personal Property Securities Register established under the PPSA;

“**Quote**” means any quote provided by European Window Co. to the Customer;

“**Security Agreement**”, “**Security Interest**” and “**Register**” have the meaning ascribed to them in the PPSA;

“**Services**” means all services supplied by European Window Co. to the Customer and includes the installation of the Products and any advice or recommendations (and where the context so permits shall include any supply of the Products as defined above);

“**Site**” means the location by which the Products are to be supplied or the Services are to be carried out as specified in the Quote, the Contract or otherwise agreed in writing;

“**Terms**” means the terms of these Terms and Conditions; and

“**Website**” means the website with the designated URL “www.eurowindow.com.au” and its associated services and/or functionality.

2. Interpretation

2.1. In these Terms unless inconsistent with the context or subject matter:

- (a) references to a party to any agreement or document include that party’s permitted assignees and successors, including executors and administrators and legal representatives.
- (b) words denoting the singular include the plural and words denoting the plural include the singular.
- (c) words denoting any gender include all genders.

- (d) the word 'person' includes any individual, corporation or other body corporate, partnership, joint venture, trust, association and any Government Agency.
- (e) any promise, agreement, representation or warranty given or entered into on the part of two or more persons binds them jointly and each of them severally.
- (f) any promise, agreement, representation or warranty given or entered into on the part of two or more persons is for the benefit of them jointly and each of them severally.
- (g) no provision of these Terms will be construed adversely to a party because that party was responsible for the preparation of that provision or these Terms.
- (h) if a period of time begins on a given day or the day of an act or event, it is to be calculated exclusive of that day.
- (i) a reference to time is a reference to time in the capital city of the State.
- (j) a reference to a day is a reference to a day in the capital city of the State.
- (k) a reference to a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later.
- (l) if any act is required to be performed under these Terms on or by a specified day and that day is not a business day, the act must be performed on or by the next business day.
- (m) a reference to an amount of dollars, Australian dollars, \$ or A\$ is a reference to the lawful currency of the Commonwealth of Australia, unless the amount is specifically denominated in another currency.
- (n) where these Terms are agreed on behalf of a party by an attorney, the attorney by executing it declares that the attorney has no notice of revocation of the power of attorney.
- (o) a reference to writing or written includes email.
- (p) where a word or phrase is defined, other parts of speech and grammatical forms of that word or phrase have corresponding meanings.

3. Application of the Terms

- 3.1. These Terms incorporate and are to be read with (in order of priority), the terms of any:
 - (a) Contract,
 - (b) Quote,
 - (c) Credit Application;
 - (d) memorandum of understanding (if any); and
 - (e) these Terms.

(collectively referred to as 'the **Contract Documents**'), together with all attachments and any other documents referred to in the Contract Documents.
- 3.2. To the extent of any inconsistency or discrepancy between any or all of the documents listed in this clause 3.1, they shall be relied upon and interpreted in descending order of precedence as described in clause 3.1.
- 3.3. Subject to clause 3.5, or unless otherwise agreed in writing, these Terms will apply exclusively to every supply of Products and/or Services to be carried out by European Window Co. to

the Customer and cannot be varied or replaced by any other conditions without the prior written consent of European Window Co.

- 3.4. Any written Quote provided by European Window Co. to the Customer concerning the supply of the Products and/or the Services is valid for 30 days, unless otherwise stated in the Quote, and is an invitation only to the Customer to place an order based upon that Quote.
- 3.5. The Customer and European Window Co. agree to keep confidential the terms of these Conditions, including the price of the Products and/or Services, except as required by law.
- 3.6. The Customer agrees that European Window Co. may review these Terms at any time. If, following any such review, there is to be any change to these Terms, then that change will take effect from the date on which European Window Co. notifies the Customer of such change.
- 3.7. All quotations and all orders for the supply of the Products and/or Services are made and/or accepted by European Window Co. on and subject to the Contract Documents. The Customer's terms and conditions, howsoever provided, do not form part of the Contract Documents (even if any representative of European Window Co. signs those terms and conditions and/or they are annexed to these Terms or any quote or purchase order).
- 3.8. If the Customer places an order with European Window Co. after receiving these Terms, the Customer shall be deemed to have read and unconditionally agreed to these Terms.

4. User agreement

These Terms shall be deemed to be incorporated into all agreements for the supply of Products and/or Services rendered by European Window Co. to the Customer. Subject to the terms of the Contract, these Terms supersede the Quote, the Credit Application and all prior understandings, arrangements and agreements relating to such supply.

- 4.1. By visiting and/or using the Website or by ordering or purchasing any Products and/or Services, the Customer agrees to be bound by these Terms.
- 4.2. If the Customer does not agree to any provisions of these Terms, the Customer must not use the Website or make any order for Products and/or Services.
- 4.3. European Window Co. may amend or vary these Terms if it first gives 30 days written notice to the Customer. By continuing to use the Website or placing orders for Products and/or Services, the Customer will be deemed to have accepted any revised terms published after such 30 day period.

5. Registration

- 5.1. In order to access some features of the Website, the Customer can elect to register as a customer of European Window Co.
- 5.2. Any information which the Customer provides to European Window Co. in registering as a customer will be stored in accordance with European Window Co.'s privacy policy which is published on the Website at www.eurowindow.com.au/privacy as amended from time to time at European Window Co.'s sole discretion.
- 5.3. The Customer may not use another customer's account and may not cause or allow another person to use the Customer's account.
- 5.4. The Customer is solely responsible for the activity that occurs on its account, and the Customer must keep its account password secure. If the Customer suspects or becomes aware of any unauthorised use of its account or that its password is no

longer secure, the Customer agrees to notify European Window Co. immediately.

- 5.5. European Window Co. may in its sole discretion terminate a Customer's account or restrict a Customer's access to the Website. If this occurs in respect of its account, the Customer may be prevented from accessing all or parts of the Website, including its account or other content contained in its account. European Window Co. will not be liable to the Customer or any third party for terminating a Customer account or restricting Customer access to the Website.

6. Orders and Cancellation

- 6.1. The advertising of any Product and/or Service for sale by European Window Co. is merely an invitation to treat and a Customer in ordering a Product and/or Service is making an offer to European Window Co. to purchase a Product and/or Service from it.

- 6.2. The agreement to purchase a Product and/or Service only comes into existence upon, either:

- (a) European Window Co. has communicated its acceptance of a Customer's order;
- (b) the entry into a signed contract with European Window Co; or
- (c) European Window Co. dispatches the Product stated in an order to the Customer.

- 6.3. By placing an order to purchase a Product, the Customer acknowledges that:

- (a) if the Customer is an individual, is over eighteen (18) years of age;
- (b) it is making an offer to European Window Co. to purchase a Product and/or Service; and
- (c) the offer does not constitute a binding contract with European Window Co. unless accepted by European Window Co in accordance with clause 6.2.

- 6.4. Unless European Window Co. consents in writing, no purported cancellation or suspension of an order or contract for Products and/or Services by the Customer will be binding on European Window Co. after that order has been accepted by the European Window Co. European Window Co. may however require as a condition of its consent that the Customer pay reasonable charges for such cancellation/variation, which represents and takes into account:

- (a) expenses incurred by European Window Co. to the date of cancellation/variation;
- (b) compensation for any commitments made by European Window Co. in consequence of the order;
- (c) the loss of profit on the project (calculated as being 45% of the contract price); and/or
- (d) all other losses both actual and prospective, incurred as a result of such cancellation/variation,

(collectively referred to as 'the **Cancellation Fee**).

If the Customer cancels an order or contract for the Products and/or Services, European Window Co. declares and the Customer declares that any such Cancellation Fee imposed by European Window Co. in accordance with this clause:

- (a) has been agreed in good faith;

- (b) is a genuine pre-estimate of the Loss European Window Co. is likely to suffer as a consequence of a of a cancellation or postponement; and

- (c) is reasonable and not intended as a penalty.

European Window Co.'s statement of expenses shall be prima facie evidence of the Cancellation Fee that is applicable.

- 6.5. European Window Co. reserves the right to accept or reject, in whole or in part, a Customer's order or contract for the Products and/or Services for any reason, including;

- (a) an incomplete Customer order or contract;
- (b) the information contained in any advertisement of a Product and/or Service being incorrect;
- (c) there is any change in the price of supply or change to the quantities or the specification of the Products and/or Services after the order is placed or contract entered into;
- (d) there is any variation to European Window Co's cost of labour or materials, or fluctuations in currency exchange rates, inaccurate structural measurements provided by the Customer or otherwise inaccurate Plans;
- (e) there is any delay with the supply of the Products and/or Services;
- (f) if the Customer requests a variation to the terms of the supply of Products and/or Services (or any part of the Products and/or Services); and/or
- (g) the unavailability of the Product.

- 6.6. In the event that European Window Co. exercises its rights to reject a Customer's order or contract, it may (at its sole and absolute discretion) refund any amount paid by the Customer in respect of the cancelled order or contract (or part thereof), less any costs or expenses that it has incurred with respect to the supply of the Products and/or any Services rendered up until the date of such rejection of a customer's order or contract and such amounts shall be a debt immediately due and owing to European Window Co.

- 6.7. European Window Co. shall not be liable for any Loss whatever arising from exercising its rights to reject a Customer's order or contract.

7. Australian & International Sales

- 7.1. European Window Co. will ship Products Australia-wide and to New Zealand. The Customer agrees that it shall be liable for all shipping and transport costs and expenses arising from the transportation of the Products.

8. Price and Variations

- 8.1. The price for Products and/or Services, delivery and other charges shown are in Australian dollars and includes GST where applicable and unless specified otherwise. If prices for the Products and/or Services provided by European Window Co. do not expressly indicate that the prices include GST, then the Customer will pay European Window Co. the price for the Products and/ or Services plus GST.

- 8.2. European Window Co. may direct a variation to the terms of the supply of the Products and/or Services (or any part of the supply of the Products and/or Services). The price for the supply of the Products and/or Services are subject to change and without notice, at European Window Co.'s sole and absolute discretion.

- 8.3. The quoted price is based upon the particular specifications of the Products and/or Services then current as the date set out in the Contract Documents. European Window Co. reserves the

right, to the extent permitted by law, to vary the price and the Customer agrees to pay immediately such varied price on demand by European Window Co. if:

- (a) there is any changes in the price of supply or change to the quantities or the specification of the Products and/or Services after the order is placed or contract is entered into;
- (b) there is any variation to European Window Co's cost of labour or materials, or fluctuations in currency exchange rates, inaccurate structural measurements provided by the Customer or otherwise inaccurate Plans;
- (c) additional Products and/or Services are required by European Window Co. or requested by the Customer;
- (d) the invoice price or contract price is varied as a consequence of currency fluctuations, taxes, customs duty or other imposts;
- (e) the Customer requests a variation to the terms of the supply of or specification of the Products and/or Services (or any part of the Products and/or Services);
- (f) there is a defect or error in the Plans;
- (g) the Services requested by the Customer are incorrect or not suitable to European Window Co; or
- (h) any changes to Site access as a result of the storage of Equipment or any other matter which affects the Equipment to be used.

The reasonable costs of a variation will be calculated by European Window Co. at reasonable rates for labour and materials and will include a reasonable administration charge, allowance for overheads and profit and other costs incurred by European Window Co. as a result of the variation.

9. Payment

- 9.1. At European Window Co.'s sole discretion, European Window Co. may provide the Products and/or Services to the Customer on credit under these Terms and/or a Credit Application.
- 9.2. At European Window Co.'s sole discretion, the Customer may be required to pay a non-refundable deposit on the price of the Products and/or Services.
- 9.3. The due date for payment of the price of the Products and/or Services will be:
 - (a) the date specified in the Contract Documents; or
 - (b) if no such date is specified, either:
 - (i) prior to the delivery of the Products and/or supply of the Services; or
 - (ii) seven (7) days following the date as stated on an invoice,(whichever is the earlier); and
 - (c) if the supply is subject to a Credit Application, within the time frame prescribed by the Credit Application.
- 9.4. The Customer must pay all money due to European Window Co. without deduction or set off and must not withhold any payment on the grounds of alleged non-performance by European Window Co. of its obligations or for any other reason.
- 9.5. Payment will be made by cash, or by bank cheque, or by direct credit, or by any other method as agreed to between the Customer and European Window Co.

- 9.6. In the event that there are insufficient funds to meet any cheque drawn by the Customer in favour of European Window Co. or any other form of payment by the Customer is dishonoured, an administration fee will be charged on each and every representation and or dishonour.

10. Default and Termination

10.1. If:

- (a) the Customer breaches these Terms (or the terms contained in any of the Contract Documents); or
- (b) the Customer defaults in payment by the due date of any amount payable to the European Window Co.,

then all money which would become payable by the Customer to European Window Co. on any account, becomes immediately due and payable without the requirement of any notice to the Customer, and European Window Co. may, without prejudice to any accrued rights or other remedy available to it:

- (c) charge the Customer interest on any sum due at the prevailing rate pursuant to the *Penalty Interest Rates Act 1983 (Vic)* plus 2 per cent per annum for the period from the due date until the date of payment in full, accruing daily;
- (d) charge the Customer for all expenses and costs (including legal costs on a solicitor/own client basis) incurred by it resulting from the default and in taking whatever action it deems appropriate to recover any sum due;
- (e) cease or suspend for such period as European Window Co. thinks fit, supply of any further Products, Services or credit to the Customer; and
- (f) by notice in writing to the Customer, terminate any contract with the Customer so far as unperformed by European Window Co.

10.2. Clause 10.1 may also be relied upon, at the option of European Window Co.:

- (a) where the Customer is an individual and becomes bankrupt or enters into any scheme of arrangement or any assignment or composition with or for the benefit of any creditors; or
- (b) where the Customer is a corporation and it enters into any scheme of arrangement or any assignment or composition with or for the benefit of any creditors or has a liquidator, provisional liquidator, administrator, receiver or receiver and manager appointed, or any action is taken for, or with the view to, the liquidation (including provisional liquidation), winding up or dissolution without winding up of the Customer

10.3. The Customer may not withhold payment or make any deduction from any amount owing without the prior written consent of European Window Co., irrespective of any claim the Customer may have against European Window Co.

10.4. Notwithstanding clause 10.1, European Window Co. may otherwise terminate this agreement on 30 days written notice. Any termination is without prejudice to the rights of European Window Co. accrued prior to such termination including the right to be paid for any Products supplied or Services rendered.

10.5. Upon termination of these Terms, the Customer shall be liable to pay to European Window Co. for the supply of the Products and/or any Services rendered up until the date of termination, and such amounts shall be a debt immediately due and owing. In the event that European Window Co terminates these Terms except due to an event of Force Majeure, then the Customer will

also be liable to pay European Window Co. all amounts which would have otherwise been payable under the Contract Documents had it not been terminated and such amount shall be a debt immediately due and owing.

- 10.6. The rights and remedies of the parties contained in this clause 10 are in addition to any other rights and remedies by law, in equity or under these Terms.

11. Scope of Works, Plans and Variations

- 11.1. The scope of works being provided by European Window Co. will be as agreed upon in the Contract Documents and where Plans are provided, all fees quoted or calculated are based on such Plans.
- 11.2. All customary building industry tolerances shall apply to the dimensions and measurements of the Products unless European Window Co. and the Customer agree otherwise in writing.
- 11.3. European Window Co. shall be entitled to rely on the accuracy of any Plans provided by the Customer.
- 11.4. Where European Window Co. prepares any Plans, the Customer is solely responsible for reviewing them and ensuring that they are fit for the Customer's purposes, suitable and correct. European Window Co. is not liable for any defect in the Plans, even if European Window Co. prepares the Plans.
- 11.5. If European Window Co. determines that additional Products are required to be supplied and/or Services are required to be carried out, or if for any reason there is a defect or error in the Plans (or the Services requested by the Customer which formed the basis for the Quote are incorrect or not ultimately suitable such as where there is an error in the Plans), then European Window Co. reserves the right to increase the price payable for the Products and/or Services by providing the Customer with written notice and such increases in the price is payable immediately on demand by European Window Co. (unless otherwise agreed by European Window Co.).
- 11.6. Despite this, European Window Co. shall be under no obligation to vary the Products and/or Services set out in the Contract Documents even if European Window Co. becomes aware of the requirement for additional Products and/or Services or a defect or error in the Plans. The Customer is solely responsible for ensuring the Plans and scope of the Products and/or Services are suitable.
- 11.7. The Customer is solely liable for the payment of any additional Products and Services outside of the scope as agreed upon in any Contract Document.

12. Delivery of Product

- 12.1. Subject to the terms in any Contract Document, European Window Co. will supply to a Customer the Products specified in an order confirmation which will be delivered to the Customer and relate to an order which the Customer has placed with European Window Co.
- 12.2. European Window Co. may provide an estimated time for dispatch and Delivery of the Products and any timelines for Delivery of the Products given by European Window Co. to the Customer is an estimate only and shall not be binding on European Window Co. and subject to change without notice. European Window Co. may deliver the Customer's orders in separate parts, instalments or in whole. European Window Co. will not be liable for any Loss suffered by the Customer due to a failure by European Window Co. to meet the estimated Delivery time. The failure of European Window Co. to deliver within a timeframe (or at all) shall not entitle the Customer to treat this contract as repudiated or make a claim for any Loss, including liquidated damages.

12.3. All Products will be Delivered to the Customer at the Delivery address provided by the Customer. The Customer may not change the Site without the written consent of European Window Co., and additional charges may apply in the event of any changes.

12.4. All costs of freight, insurance and other charges associated with the delivery of the Products to the agreed delivery address shall be borne by the Customer.

12.5. The Customer shall make all arrangements necessary to take delivery of the Products whenever they are tendered for delivery. In the event that the Customer is unable to take delivery of the Products as arranged then European Window Co. shall be entitled to charge a reasonable fee for redelivery. Where this occurs, European Window Co. may store the Products at the risk of the Customer until delivery takes place again. Delivery of the Products to a third party nominated by the Customer is deemed to be delivery to the Customer for the purposes of these Terms.

12.6. If the Customer is unable or fails to accept delivery of the Products, the Customer will be liable for all costs incurred by European Window Co. due to storage, detention, double cartage, travel expenses or similar causes.

12.7. European Window Co. will not be responsible for any lost or stolen Products or Equipment in the event that they are delivered to the delivery address (regardless of whether the Customer or its Personnel were available to collect them).

13. Installation

13.1. Unless installation is expressly noted in the Contract Documents, installation of the Products is not included. In the event that installation is not included and European Window Co. provides the Customer with any installation instructions, it is the Customer's responsibility to ensure that the instructions and Products are suitable for its needs (as the installation will generally require interaction with other materials not supplied by European Window Co. and European Window Co. cannot provide any warranties as to how other materials will react when the Products are installed).

13.2. In the event that the Contract Documents expressly notes that European Window Co. will install the Products, then European Window Co. agrees to install the Products at the Site nominated in the Contract Documents or otherwise agreed by European Window Co. in writing. The Customer may not change the Site without European Window Co.'s written consent, and additional charges may apply in the event of any changes.

13.3. In the event that European Window Co. is undertaking the installation of the Products, the Customer must ensure that:

- (a) European Window Co., its Personnel and their Equipment have full, safe, unobstructed and unfettered access to the site, as well as full, safe, unobstructed and unfettered access to pass through any other areas for the purpose of providing the Services, at all times during which the Services are being provided;
- (b) the Site complies with best practice work health and safety requirements and standards;
- (c) the Site is clear of bricks, timber, sand and any other rubbish; and
- (d) electricity is supplied on Site (and the Customer/its Personnel must organise a working generator at their cost in the case of no electricity supply to the Site).

13.4. Where Equipment is required to be left and stored at the Site the Customer shall ensure the security and safe keeping of such Equipment. Equipment left at the Site will be at the risk of the

Customer (however ownership shall at all times remain with European Window Co.).

13.5. The Customer represents and warrants to European Window Co. that:

- (a) the structure of the premises or equipment in or upon which these Products are to be installed or erected is sound and will sustain the installation and work incidental thereto and European Window Co. shall not be liable for any claims, demands, Losses, damages, costs and expenses howsoever caused or arising should the premises or equipment be unable to accommodate the installation; and
- (b) it has all necessary rights and authorities to grant European Window Co. access to the Site, and that by accessing the Site in accordance with these Terms, European Window Co. will not be infringing any third party rights.

13.6. If for any reason that European Window Co. form the opinion that the Site is not safe for the installation of the Products, then European Window Co. shall be entitled to delay the installation of the Products until European Window Co. is satisfied that it is safe for the installation to proceed. European Window Co. may at its sole and absolute discretion, agree to bring the Site up to a standard suitable for installation to proceed but all such works undertaken and any additional Products supplied shall be treated as a variation and be charged for in addition to the price.

14. Risk, Title and Insurance

14.1. European Window Co. retains ownership of the Products until payment is received in full from a Customer, and all other amounts owing in respect of the Products are paid to European Window Co. notwithstanding:

- (a) the Delivery or collection of the Products to/by the Customer; and
- (b) installation in or attachment of the Products to anything else; and/or
- (c) the possession and use of the Products by the Customer.

14.2. The Customer accepts upon Delivery all risk for Loss to the Products whether caused by the Customer or not, and the Customer indemnifies European Window Co. against all claims, demands, suits and actions for loss or damage caused by or arising from the handling, transport, storage, display, installation, neglect or use of the Products after the Customer has taken possession of the Products. Risk in the Products will remain with the Customer at all times after Delivery.

14.3. The Customer must:

- (a) hold the Products as fiduciary bailee and agent for European Window Co.;
- (b) keep the Products separate from its own goods and maintain the labelling and packaging of European Window Co.;
- (c) hold the proceeds of any sale of the Products on trust for European Window Co. in a separate account;
- (d) deliver up all Products to European Window Co. immediately upon service of a written demand; and
- (e) European Window Co. may without notice, enter any premises where it suspects the Products may be and remove them, notwithstanding that they may have been attached to other Products not the property of European Window Co., and for this purpose the Customer irrevocably licences European Window Co. to enter such premises and also indemnifies European Window Co. from and against all costs, claims, demands or actions by any

party arising from such action, until full payment in cleared funds is received by European Window Co. for all Products supplied by it to the Customer, as well as all other amounts owing to European Window Co. by the Customer.

14.4. The Customer may resell the Products in the ordinary course of its business (but may not otherwise sell or encumber the Products) and if it does so shall receive the proceeds of resale as trustee of European Window Co., to be held on trust for European Window Co. European Window Co. shall be entitled to trace the proceeds of resale.

14.5. To assure performance of its obligations under these Conditions, the Customer and the Guarantor:

- (a) hereby grants European Window Co. an irrevocable power of attorney to do anything European Window Co. considers should be done by the Customer pursuant to these Conditions. European Window Co. may recover from the Customer the cost of doing anything under this clause 14.5, including registration fees;
- (b) agree to mortgage and/or charge all of their joint and/or several interest in any land, realty or any other asset capable of being charged to European Window Co. to secure all amounts and other monetary obligations payable under these Terms.
- (c) acknowledge and agree that European Window Co. shall be entitled to lodge where appropriate a Caveat, which caveat shall be withdrawn once all payments and other monetary obligations payable hereunder have been met.

14.6. All risk in the Products and all insurance responsibility for theft, damage or otherwise in respect of the Products will pass to the Customer immediately upon delivery of the Products to the Customer.

15. Equipment

15.1. Notwithstanding anything to the contrary express or implied in these Terms, the parties agree that European Window Co. retains full title to the Equipment and title will not at any time pass to the Customer. The Equipment is to be used solely by European Window Co. in providing the Services, and may be collected or inspected by European Window Co. at any time. The Customer must not, and must ensure that its Personnel do not, touch or use the Equipment.

15.2. Except to the extent caused or contributed to by European Window Co., the Customer is solely responsible for any damage that occurs to the Equipment whilst it is on Site or otherwise within the Customer's possession, or any Loss suffered by European Window Co. or any third party in connection with that Equipment being left with the Customer. The Customer indemnifies European Window Co. in respect of any Loss suffered by European Window Co. in connection with the Equipment being left on the Site or in their possession.

16. Returns

16.1. All Products are sold on a non-returnable, non-refundable basis and, subject to clauses 16.2 and 16.3, may only be returned if the Products are defective, damaged by European Window Co. upon delivery or are incorrectly supplied by European Window Co.

16.2. Any claim by the Customer that the Products are defective, damaged or incorrectly supplied must be made in writing to European Window Co. within 5 business days of receipt of the Products by the Customer (time being of the essence) and the Customer must provide a reasonable opportunity for European Window Co. to inspect the Products. European Window Co.'s only liability (if any) is limited to the resupply of the Products. If the Customer fails to comply with this clause, the Products shall be presumed to be free from any damage, defect or error.

16.3. Notwithstanding clause 16.1, returns may be accepted in European Window Co.'s sole discretion subject to these Terms and any other conditions stipulated on the Website from time to time, but all such Products returned will be subject to a minimum 25% handling fee. The Products will not be accepted for return other than in accordance with clauses 16.2 and 16.3 above.

16.4. The Customer is responsible for return shipping costs.

17. Performance of Services

17.1. The provision of Services by European Window Co. to the Customer will take place at a time agreed between European Window Co. and the Customer.

17.2. The provision of Services to a third party nominated by the Customer shall be deemed to be provision of the Services to the Customer for the purpose of these Terms.

17.3. Any times provided by European Window Co. to the Customer in respect of the provision of the Services are estimates only and are non-binding on European Window Co.. Whilst European Window Co. attempts to provide all Services at the agreed times, sometimes delays are inevitable and European Window Co. will not be responsible for any Losses suffered by the Customer in the event of delay.

17.4. The Services will be provided in accordance with the Contract Documents (and any Plans included therein). In the event that the Plans are defective, European Window Co. will not be liable to the Customer for any Loss that they suffer and the Customer will still be liable to pay the entirety of the fees for the entirety of the Services to European Window Co. even if European Window Co. is unable to properly or fully provide the Services (such as where the Products do not fit within their designated space so they cannot be installed). The Customer acknowledges that upon a contract being entered into or a Quote being accepted, European Window Co. allocates resources and time to the fulfillment of that order and the Customer shall be liable for any Loss incurred by European Window Co. for the cancellation or termination of the supply of the Products and/or the carrying out of any Services rendered under such order or contract.

17.5. European Window Co. provides the Services on an "as is" basis and without any warranties, representations, or conditions of any kind, whether express, implied or statutory, to the extent permitted by law. The Customer relies on the Services at its own risk.

17.6. Without limiting the other terms of this clause, the Customer acknowledges and agrees that:

- (a) any advice, recommendation, information, assistance or service provided by European Window Co. in relation to the Services supplied is given in good faith, is based on the European Window Co.'s own knowledge and experience and it shall be the responsibility of the Customer to confirm the accuracy and reliability of the same in light of the use to which the Customer makes or intends to make of the Products or Services. Such advice, recommendations, information and assistance is followed or acted upon entirely at the Customer's own risk, and accordingly European Window Co. shall not be liable for any such advice or recommendation;
- (b) European Window Co. reserves the right to make any changes in the specification of the Products which are required to conform with any applicable safety or other statutory or regulatory requirements or, where the Products are to be supplied to European Window Co.'s specification, which do not materially affect their quality or performance;
- (c) that Products supplied may:

- (i) exhibit variations in shade, colour, texture, surface, finish, markings and may contain natural fissures, occlusions, lines, indentations and may fade or change colour over time; and
- (ii) mark or stain if exposed to certain substances; and
- (iii) be damaged or disfigured by impact or scratching.

18. Defective Services

18.1. The Customer must inspect the provision of the Services (including the Products) immediately on the completion of the provision of the Services (being upon collection of the Products by the Customer or upon delivery or installation by European Window Co.).

18.2. The Customer may reject as defective any Services delivered to it that do not comply with the requirements of these Terms provided that the Customer gives notice of rejection by the earlier of:

- (a) seven days following the completion of the Services; and
- (b) the date that the Customer has incorporated the Products with any other goods or materials, or otherwise installed or had them installed.

18.3. Upon such notification of defective Services, the Customer must:

- (a) provide any photographic evidence requested by European Window Co.; and
- (b) allow European Window Co. to inspect the Services supplied to determine whether they are defective (this includes granting European Window Co. unimpeded access to inspect such Products).

18.4. If the Customer is aware or ought reasonably to be aware that the Services are defective for any reason, then the Customer must take all necessary steps to mitigate any Loss. The Customer must not attempt to repair any Products itself except where directed to do so by European Window Co. in writing.

18.5. Except as required by law, for each Service that is deemed defective in accordance with this clause, European Window Co.'s liability will be limited to the supplying of the relevant Services again or the payment of the cost of having the relevant Services supplied again (to remedy such defect) and such replacement Services will not be carried out until the Customer's account is paid in full.

18.6. Subject to the terms of this clause, the Services will only be dealt with in accordance with this clause provided that:

- (a) the Customer has complied with the other terms of this clause;
- (b) European Window Co. has agreed (in its reasonable opinion) that the Services are defective;
- (c) the Products to which the defective Services relates to are returned within 14 days to European Window Co. (if necessary) at the Customer's cost; and
- (d) the returned Products are accompanied by all original delivery documentation

18.7. Notwithstanding the above clauses, European Window Co. will not be liable for or required to accept any return for any defect or damage in any case where such defect or damage is caused or partly caused by or arises as a result of:

- (a) the Customer's acts or omissions, including the Customer failing to take reasonable steps to prevent them from becoming defective or the Customer failing to follow European Window Co.'s instructions or best industry practice or any other obligations set out in these Terms;
- (b) European Window Co. following any instructions supplied by the Customer, including the Plans;
- (c) the Customer altering, modifying or repairing the Products without the written consent of European Window Co.;
- (d) the Customer continuing the use of any Products after any defect became apparent or should have become apparent to a prudent operator or user;
- (e) wilful damage, negligence, or incorrect storage;
- (f) fair wear and tear; or
- (g) any accident or circumstance outside the reasonable control of European Window Co.

18.8. The Customer is solely responsible for ensuring that the provision of the Services is suitable or adequate for its purposes. The Customer acknowledges that prior to execution it has satisfied itself by independent investigation as to the suitability of the Services for its purposes and as to the requirements of any applicable legislation or any relevant government authority. To the fullest extent permitted by law all warranties as to suitability and as to adequacy otherwise applicable are expressly negated.

18.9. Where the Customer arranges for the transport and logistics of the Products, the Customer takes sole responsibility of such, and European Window Co. expressly excludes all warranties with respect to any defect or damage that occurs as a result of the transport and logistics arranged by the Customer.

18.10. Notwithstanding any other clause in these Terms, European Window Co. will only be responsible for defects in the Services, Products and components that European Window Co. supplies. To the extent permitted by law European Window Co. will not be liable for or required to provide any remedy for:

- (a) any components or materials supplied by the Customer;
- (b) any services carried out by third parties;
- (c) any defect or damage where such defect or damage is caused by or arises as a result of the Customer (or the Customer fails to take reasonable steps to prevent them from becoming defective), fair wear and tear, or any accident or circumstance outside the reasonable control of European Window Co.;
- (d) damages incurred as a result of the removal of the Products after installation;
- (e) water damage to floor coverings and walls;
- (f) theft where the Customer or anyone other than European Window Co. has installed the Products incorrectly; or
- (g) any consequential, indirect or special losses.

19. Personal Property Securities Act 2009 (Cth) ('PPSA')

19.1. The Customer agrees that European Window Co. will have a Purchase Money Security Interest (as defined in the PPSA) in any Products supplied to the Customer under these Terms or any related order or contract. European Window Co. may register any security interest contemplated by these Terms and/or any related order or contract on the PPS Register (as

defined in the PPSA) to secure the purchase price for the Products. The Customer agrees to supply European Window Co. with any information, provide European Window Co. with all necessary assistance and take any steps European Window Co. requires for the purposes of perfecting and enforcing such security interest.

19.2. The parties agree that where European Window Co. has rights in addition to those under Chapter 4 of the PPSA, those rights will continue to apply. The Customer contracts out of and waives its rights to receive notices under the following provisions of the PPSA: sections 95, 120, 121(4), 123, 125, 129, 130, 134 and 135(2). The Customer contracts out of and waives its rights as a grantor and/or a debtor to redeem the goods under section 142 of the PPSA or reinstate the collateral under section 143 of the PPSA, and to the extent permitted by law waives its right to receive a notice of any verification statement under section 157 of the PPSA.

19.3. The Customer(s) agree(s) to notify European Window Co. in writing within seven (7) days of any change to:

- (a) its business or corporation structure; and
- (b) the legal status of the account trading name.

19.4. The Customer further agrees that these Terms also create a Security Interest in all of the Customer's Other Property, although such Security Interest is not intended to prevent the Customer from transferring such Other Property in the ordinary course of the Customer's business; and

19.5. The parties agree that European Window Co. is not required to respond to a request made under Section 275 of the PPSA and that neither party will disclose information of the kind set out in Section 275(1) of the PPSA.

19.6. The Customer irrevocably nominates constitutes and appoints European Window Co. and/or its officers and/or its nominees severally to be the true and lawful attorneys of the Customer on behalf of and in the name of the Customer to do all things necessary and sign all such documents as may be necessary to deal with the Products and the Equipment in accordance with the enforcement provisions of these Terms, the PPSA or otherwise, if the Customer is in default of these Terms.

20. Statutory Conditions and Warranty

20.1. The Customer warrants to European Window Co. that as at the date of these Terms and for the duration of these Terms:

- (a) the Plans are true, correct and accurate and do not contain errors or defects and contain all information that any reasonable person in European Window Co.'s position would need to know in order to quote and supply the Products and/or Services;
- (b) the information contained in these Terms are true and correct and it has disclosed all relevant information to European Window Co. to assess the credit-worthiness of the Customer;
- (c) it has the legal right and power to enter into these Terms;
- (d) the execution, delivery and performance of these Terms by the Customer has been duly and validly authorised by all necessary corporate action on its part;
- (e) these Terms are a valid and binding agreement on the Customer, enforceable in accordance with its terms;
- (f) the Customer is not suffering an Insolvency Event and no Insolvency Event is imminent; and
- (g) it has the capacity to make the payment in accordance with these Terms.

- 20.2. **Consumer Notice:** European Window Co. Products and services come with guarantees that cannot be excluded under the Australian Consumer Law. Nothing in these Terms purports to modify or exclude the conditions, warranties, guarantees and undertakings, and other legal rights, under the Australian Consumer Law and other laws which cannot be modified or excluded.
- 20.3. Where any law implies a warranty into this agreement which may not be lawfully excluded then to the extent allowed by law (**Warranty**), any liability imposed upon European Window Co. in respect of a breach of warranty will at its option be limited to:
- (a) in the case of Products:
 - (i) the replacement of the Products or the supply of equivalent Products;
 - (ii) the repair of the Products;
 - (iii) the payment of the cost of replacing the Products or of acquiring equivalent Products;
 - (iv) the payment of the cost of having the Products repaired; or;
 - (v) refund of the price of the Products.
 - (b) in the case of Services:
 - (i) the resupply of services,
 - (ii) the payment of the cost of resupply of the services; or
 - (iii) the refund of the price paid for the services.
- 20.4. Warranties do not apply where the Products are acquired for rental, hire or other commercial purpose.
- 20.5. To the extent permitted by law, the following are not covered by Warranty unless otherwise specified in the particular warranty relevant to the Product purchased:
- (a) failure or defect resulting from improper care or use;
 - (b) normal wear and tear;
 - (c) Products purchased second hand or from an unauthorised distributor;
 - (d) faulty or incorrect assembly of the Products by the Customer;
 - (e) installation of a part or accessory not compatible with the Product and not manufactured by European Window Co.; and
 - (f) any modification or alteration not conducted or authorised by European Window Co..
- 20.6. To the extent permitted by law, European Window Co. shall not be liable for any indirect or consequential damage, losses or expenses suffered or incurred by the Customer, howsoever caused.
- 20.7. To issue a Warranty claim, the Customer will be required to:
- (a) contact European Window Co. within 14 days of Delivery (**Notification Period**), by email to sales@eurowindow.com.au;
 - (b) return the Product to European Window Co.;
 - (c) present the receipt as proof of purchase;
 - (d) identify the defect in the Product; and
 - (e) present Product for inspection on request.
- 20.8. The Notification Period may be extended by European Window Co. at its sole discretion upon request by a Customer.
- 20.9. Except if and to the extent the law requires otherwise, replacement of Products or refund of purchase price and reimbursement of freight costs will not be made until the original Product to which the Warranty claim relates is received by European Window Co. and the Customer's Warranty claim is verified.
- 20.10. European Window Co. will not refund or replace a Product where in its sole and reasonable opinion the Product has subsequent to Delivery become of unacceptable quality due to fair wear and tear, misuse, failure to use in accordance with manufacturer's instructions, using it in an abnormal way or failure to take reasonable care.
- 20.11. European Window Co. may at its sole discretion meet the reasonable shipping expenses incurred by the Customer in making a successful Warranty claim. Customers are liable for any transportation costs if the Product is not found to be faulty.
- ## 21. Limitation of Liability
- 21.1. Except as expressly set out in these Terms and the Australian Consumer Law, European Window Co. makes no warranties or other representations in relation to the supply of Products to the Customer. European Window Co.'s liability in respect of these warranties, representations, undertakings and guarantees is limited to the fullest extent permitted by law.
- 21.2. The Customer acknowledges and agrees that:
- (a) to the maximum extent permitted by law, European Window Co. will not be liable to the Customer or any other person under any circumstances for any Loss suffered or incurred by the Customer or for any injury or death to any person, or for any indirect, incidental or consequential damages sustained or incurred by the Customer, whether such liability arises directly or indirectly as a result of:
 - (i) any act or omission or conduct of European Window Co. or its Personnel, including any delay caused by European Window Co. or its Personnel;
 - (ii) the supply, performance or use of any Products and/or Services; or
 - (iii) any breach by European Window Co. of its obligations under these Terms.
 - (b) no other term, condition, agreement, warranty, representation or understanding (whether express or implied) in any way binding upon European Window Co., other than these Terms, is made or given by or on behalf of European Window Co..
 - (c) the Customer is solely responsible for making an assessment that any Product supplied and/or Services performed are reasonably fit for the Customer's intended purpose and required use, and such purpose or required use is in accordance with all applicable laws.
- 21.3. European Window Co. will endeavour to provide Products and any services which it may provide to a Customer with due care and skill but does not warrant that any services will be provided without fault or disruption. To the extent allowed by law, European Window Co. excludes all liability to a Customer or anyone else for Loss of any kind (however caused or arising)

relating in any way to the Website including, but not limited to, loss or damage a Customer might suffer as a result of:

- (a) errors, mistakes or inaccuracies on the Website;
- (b) a Customer acting, or failing to act, on any information contained on or referred to on the Website and/or any linked website;
- (c) personal injury or property damage of any nature resulting from a Customer's access to, and use of, the Website;
- (d) any unauthorised access to or use of European Window Co.'s secure servers and information of any kind stored on those servers;
- (e) any interruption or cessation of transmission to or from the Website;
- (f) any computer bugs, viruses, Trojan horses or other harmful code or communications which may be transmitted to or through the Website by any third party; and
- (g) the merchantability or fitness for any purpose of any product or service of any website linked to or advertised on the Website. European Window Co. does not warrant, endorse, guarantee or assume responsibility for any product or service advertised or offered by a third party through the Website or any linked website or any products or services featured in any banner or other advertising. European Window Co. will not be a party to or in any way responsible for monitoring any transaction between a Customer and a third party provider of products and services.

21.4. If European Window Co. is liable to the Customer in relation to a failure to comply with a guarantee that applies under Division 1 of Part 3-2 of the Australian Consumer Law that cannot be excluded, or is otherwise liable for any matter that cannot be excluded, European Window Co.'s total liability to the Customer for that failure is limited to, at the option of European Window Co. the costs of the resupply of the relevant Services to which the liability relates or the payment of the costs of resupply of the relevant Services.

22. Information on this Website

22.1. The Customer agrees to make its own enquiries to verify information provided and to assess the suitability of Products and/or Services before it places a purchase order with European Window Co.. European Window Co. is not responsible for any typographical, technical, or descriptive errors of products on the Website. If European Window Co. becomes aware of the existence of such an error it will do all things reasonably necessary to rectify such an error. To the extent permitted by the Australian Consumer Law, European Window Co. will not be liable to any Customer for any Loss arising out of a Customer's reliance upon any typographical, technical, or descriptive errors of products on the Website.

23. Links to third party websites

23.1. The Website may include links to other websites, content or resources. These linked websites, content or resources may be operated by third parties and European Window Co. may have no control over the operation of such websites. The existence of these links does not imply that European Window Co. endorses the linked website, content or resource. The Customer acknowledge that European Window Co. has not reviewed any of these third party websites, content or resources and are not responsible for the material contained therein.

24. Intellectual Property

24.1. The Customer's purchase of a Product does not confer on the Customer any assignment of any Intellectual Property Rights that subsists in any of the Products or any other materials supplied by European Window Co., and the Customer agrees that it will not assert any rights in, or challenge European Window Co.'s title to, those Intellectual Property Rights. Where European Window Co. has designed, drawn or written Products for the Customer, then copyright in those designs and drawings and documents shall remain vested in European Window Co., and shall only be used by the Customer at European Window Co.'s discretion.

24.2. European Window Co. makes no representation or warranty to the Customer of any kind, express or implied that the Products will not infringe any intellectual property rights of a third party.

24.3. The Customer acknowledges that European Window Co. retains ownership of all rights, title, interest and goodwill in the Intellectual Property Rights that subsists in any of the Products or any other materials supplied by European Window Co. (including user guides, instruction manuals and other documents).

24.4. European Window Co. grants to the Customer, and the Customer accepts, a personal non-exclusive licence to use the Intellectual Property Rights that subsists in any of the Products, Services or any other materials supplied by European Window Co. (including user guides, instruction manuals and other documents) for the purposes of these Terms.

24.5. The Customer shall not be permitted to assign, transfer or sublicense any of the rights granted to it by European Window Co. to any related party or any unrelated third party without the express consent in writing of European Window Co.. European Window Co. may withhold such consent in its absolute discretion or may grant consent on such terms as it considers fit.

24.6. The Customer shall not re-publish, transfer, copy, reproduce or post on the internet any of European Window Co.'s materials without European Window Co.'s prior written consent.

24.7. In addition to any other remedies available to European Window Co. under these Terms or otherwise, any unauthorised use, alteration, modification, reproduction, publication, disclosure or transfer of the Intellectual Property Rights will entitle European Window Co. to any available statutory or equitable remedy against the Customer.

24.8. The copyright in the Website, copy, images, logos, indicia, text, content, and unique method of showcasing products is owned by European Window Co.. The domain name www.eurowindow.com.au or any of the trademarks, logos or other material in which intellectual property rights subsist may not be used in advertising or publicity pertaining to distribution of this information without European Window Co.'s prior written consent.

24.9. Trade marks used on the Website which are owned by third parties are used with express permission and remain the intellectual property of the third party.

24.10. The Customer may not modify or copy the layout or appearance of the Website nor any computer software or code contained in the Website. The Customer may not decompile or disassemble, reverse engineer or otherwise attempt to discover or access any source code related to the Website.

24.11. If the Customer corresponds or otherwise communicates with European Window Co., The Customer grants to European Window Co. an irrevocable, perpetual, non-exclusive, royalty-free, world-wide licence to use, copy, display and distribute the content of the Customer's correspondence or communication and to prepare derivative works of the content or incorporate the content into other works in order to publish and promote such content. This may include, but is not limited

to, publishing testimonials on the Website and developing the Customer's ideas and suggestions for improved products or services European Window Co. provides.

24.12. The Customer warrants that all designs, instructions or Plans given to European Window Co. will not cause European Window Co. to infringe any intellectual property rights or third party rights of any third party and the Customer agrees to indemnify European Window Co. against any action taken by a third party against European Window Co. in respect of any such infringement.

24.13. The Customer agrees that European Window Co. may (at no cost) use, for the purposes of advertising, marketing or entry into any competition, any documents, designs, drawings, Products created by European Window Co. and/or photographs of the Products installed at the Customer's premises which the Customer provides or creates (or European Window Co. takes).

25. Colours & Images

25.1. European Window Co. has endeavoured to display as accurately as possible the colours of the Products shown on the Website. However, because the colours the Customer sees will depend on its monitor, European Window Co. does not guarantee that the Customer's monitor's display of any colour will be accurate.

25.2. Images contained on the Website are for illustration purposes only.

26. Transfer, Assignment, and Licensing

26.1. In the event that European Window Co. merges, sells or otherwise undergoes a change control of its business or the Website to a third-party, it reserve the right, without giving notice or seeking consent, to transfer or assign the personal information, content and rights that it has collected from the Customer and any agreements between the Customer and European Window Co.

26.2. European Window Co. may assign, license or sub-contract all or any part of its rights and obligations without the Customer's consent.

27. Privacy and personal information

27.1. European Window Co. does not collect personal information if the Customer only browses this Website.

27.2. European Window Co.'s computer server may record details about any computer which is used to access the Website (such as the IP address, operating system and browser type), the date and time of access, and details of the information downloaded.

27.3. When European Window Co. does collect personal information for the purposes of considering a Credit Application or a Customer's order, its usual practice is to collect this information directly from the Customer. Such information will be collected via the placement of an order for a Product and/or Service. Personal information may include a Customer's name, postal address, telephone number and email address.

27.4. A Customer's personal information will only be used for the purposes for which The Customer provides it and for European Window Co. internal management purposes. The Customer agrees to European Window Co. using its email address to send the Customer messages concerning any orders that the Customer places and information about the Products and/or Services. If the Customer would prefer not to receive promotional or other material from European Window Co, please advise European Window Co. accordingly.

27.5. In the event that a Customer wishes for European Window Co. to approve a Credit Application,

(a) The Customer/ Guarantor(s) agree(s) that European Window Co. may obtain from a credit report agency a credit report containing person credit information about the Customer/ Guarantor(s) with credit providers either named as trade referees by the Customer/ Guarantor(s) or named in a consumer credit report issued by a credit reporting agency provided by European Window Co..

(b) The Customer/ Guarantor(s) agrees that European Window Co. may exchange information about the Customer/ Guarantor(s) with those credit providers either named as trade referees by the Customer/ Guarantor(s) or named in a consumer credit report issued by a credit reporting agency for the following purposes:

(i) to assess an application by the Customer/ Guarantor(s) and/or;

(ii) to notify other credit providers of a default by the Customer/ Guarantor(s) and/or;

(iii) to exchange information with other credit providers as to the status of this credit account, where the Customer/ Guarantor(s) is in default with other credit providers, and/ or;

(iv) to assess the credit worthiness of the Customer/ Guarantor(s).

(c) The Customer/ Guarantor(s) consents to European Window Co. being given a consumer credit report to collect overdue payment on commercial credit.

(d) The Customer/ Guarantor(s) understands that their information exchanged can include anything about the Customer's credit worthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the *Privacy Act 1988* (Cth) (**Privacy Act**).

(e) The Customer/ Guarantor(s) agrees that personal credit information provided may be used and retained by European Window Co. for the following purposes and for other purposes as shall be agreed between the Customer/ Guarantor(s) and European Window Co. or required by law from time to time;

(i) the provision of Products and/or the Services; and/or;

(ii) the marketing of goods by European Window Co., its agents or distributors and/or;

(iii) analysing, verifying and/or checking the Customer/ Guarantor(s)'s credit, payment and/or status in relation to the provision of Products and/or the Services; and/or;

(iv) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer/Guarantor(s) and/or;

(v) enabling the daily operation of the Customer/Guarantor(s)'s account and/or the collection of amounts outstanding in the Customer/Guarantor(s)'s account in relation to the Products and/or the Services.

(f) European Window Co. may give information about the Customer/Guarantor(s) to a credit reporting agency for the following purposes:

- (i) to obtain a consumer credit report about the Customer/Guarantor(s);
- (ii) allow the credit reporting agency to create or maintain a credit information file containing information about the Customer/Guarantor(s).

(g) The information given to the credit reporting agency may include:

- (i) personal particulars, the Customer/Guarantor(s) name, address, previous addresses, date of birth, names of employer, driver's licence number;
- (ii) details concerning the Customer/Guarantor(s) application for credit or commercial credit and the amount requested;
- (iii) advice that European Window Co. is a current credit provider to the Customer/Guarantor(s);
- (iv) 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 commenced;
- (v) that the Customer/Guarantor(s) overdue accounts, loan repayment and/or any outstanding monies are no longer overdue in respect of any default that has been listed;
- (vi) information that, in the opinion of European Window Co., the Customer/Guarantor(s) has committed a serious credit infringement, fraudulently or shown intention not to comply with the Customer/Guarantor(s) credit obligations;
- (vii) advice that cheques drawn by the Customer for one hundred dollars (\$100) or more have been dishonoured more than once; and
- (viii) that credit provided to the Customer/Guarantor(s) by European Window Co. has been paid or otherwise disregarded.

27.6. European Window Co. will not provide any Customer information to government agencies, organisations or anyone else unless:

- (a) the Customer has consented to European Window Co. providing such information;
- (b) European Window Co. has notified The Customer that it will be providing the Customer's information;
- (c) the provision of the Customer's information is required or authorised by law;
- (d) the provision of the Customer's information will prevent or obviate a serious and imminent threat to a person's life or health; or
- (e) the disclosure is reasonably necessary for law enforcement.

27.7. The Customer may request that European Window Co. remove the Customer's personal information from its database by emailing European Window Co. or using the contact form on the Website.

27.8. Pursuant to the Privacy Act the Customer has a right to request access to its personal information held by European Window Co.. The Customer may do this by sending an email to sales@eurowindow.com.au;

28. Building and Construction Industry Security of Payment Act 2002

28.1. At European Window Co.'s sole discretion, if there are any disputes or claims for unpaid Products and/or Services then the provisions of the Building and Construction Industry Security of Payment Act 2002 may apply.

28.2. Nothing in these Terms are intended to have the affect of contracting out of any applicable provisions of the Building and Construction Industry Security of Payment Act 2002 of Victoria, except to the extent permitted by the Act where applicable.

29. Indemnity and Release

29.1. Thus Customer will at all times indemnify, and agree to keep indemnified, European Window Co. and its directors, officers, employees and agents from and against any and all Loss (including reasonable legal costs and expenses on a full indemnity basis) or liability incurred or suffered by the Customer or by European Window Co. arising from any claim, demand, suit, action or proceeding by any person against the Customer or against European Window Co. where such loss or liability arose out of, in connection with or in respect of:

- (a) the Customer's conduct, or breach of these Terms, including any costs of enforcement;
- (b) any Claim made against European Window Co. and/or the Customer by a third party arising out of or in connection with the provision of the Services and/or these Terms;
- (c) any event or cause, beyond the control of European Window Co. including a force majeure event as outlined in clause 31;
- (d) any reliance by the Customer or a third party on the Services or any advice, information or deliverable provided in connection with the provision of the Services and/or these Terms;
- (e) the enforcement of these Terms; and
- (f) any act, omission or wilful misconduct of the Customer or the Customer's Personnel (including any negligent act or omission).

29.2. Except as provided under these Terms and to the extent permitted by law the Customer releases European Window Co. and its officers, employees and agents from any and all Claims by the Customer or any of its officers, employees, agents or invitees, except to the extent (if any that) the Loss the subject of the Claim is caused by the fraudulent act or omission of European Window Co.

29.3. The indemnities in this clause:

- (a) are continuing obligations of the Customer, independent from its other obligations under these Terms and survive termination or expiry of these Terms; and
- (b) are absolute and unconditional and unaffected by anything which otherwise might have the effect of prejudicing,

releasing, discharging or affecting the liability of the Customer.

30. Waiver

- 30.1. If European Window Co. does not exercise or enforce any right or provision under this agreement, it will not constitute a waiver of such right or provision. Any waiver of any provision under this agreement will only be effective if it is in writing and signed by European Window Co..

31. Force majeure

- 31.1. If the performance of European Window Co.'s obligations under these Terms is prevented, restricted or affected by force majeure including strike, lock out or industrial action, national emergency, raw material shortage, global or national pandemic, enactment, direction, ruling or decree of any governmental authority (including without limitation, Australian Federal or State Government or any other Australian governmental authority or body, or any governmental authority of any other country) or any other form of government intervention that prevents the fulfilment of any obligation under these Terms, insurrection, riot or other civil commotion, natural, chemical or nuclear disaster, earthquake, fire, storm, flood, adverse weather conditions, explosion, enforced closure of airports or ports, terrorist activities, war, blockade, circumstances arising or prevailing that threaten public safety or order and would result in risk to personal injury or would result in risk of damage to property, non-availability of essential equipment, breakdown of plant, transport or equipment or any other cause whether or not of the kinds specifically enumerated above which could not be taken into account beyond the reasonable control of European Window Co. (**Force Majeure Event**), European Window Co. will not be liable for any Loss suffered by the Customer or any other person
- 31.2. European Window Co. will endeavour to give the Customer prompt written notice of the Force Majeure Event over which it will be unable to perform or will be delayed in performing that obligation, and any obligation of European Window Co. will be suspended during the continuance of that Force Majeure Event and European Window Co. shall be allowed a reasonable extension of time to perform its obligations under these Terms.
- 31.3. If, after 28 days of issuing the notice pursuant to clause 31.2, European Window Co. cannot continue to perform its obligations, the Terms and any agreement entered into with the Customer may, at the election of European Window Co., be terminated immediately or suspended for a further period of time, by written notice by European Window Co. to the Customer and European Window Co. will be released from all its obligations under these Terms and any agreement entered into with the Customer in the case of a Force Majeure Event and European Window Co. will refund any amount paid by the Customer, less any costs that it has incurred with respect to the supply of the Products and/or any Services rendered arising from the date of the Force Majeure Event.

32. Applicable law

- 32.1. These Terms and any agreement between European Window Co. and a Customer will be governed by and interpreted in accordance with the laws of Victoria, Australia. The Customer irrevocably submits to the non-exclusive jurisdiction of the courts of the State of Victoria, Australia.
- 32.2. If any part of this agreement is found to be void, unlawful or unenforceable then that part will be deemed to be severable from the balance of these Terms or any agreement between European Window Co. and its Customers the severed part will not affect the validity and enforceability of any remaining provisions.