

TERMS AND CONDITIONS OF SUPPLY 2018

1. DEFINITIONS

“**Agreement**” means the agreement of BGC to supply Goods and Services as set out in the relevant Quote or Order.

“**BGC**” means Buckeridge Nominees Pty Ltd (ACN 008 849 581) as trustee for the PAW Unit Trust (ABN 55 519 847 105) trading as BGC Commercial Windows.

“**Consequential Loss**” means loss beyond the normal measure of direct damages and includes without limitation and whether or not such loss would be within the normal measure of direct damages, indirect loss, loss of profit, loss of revenue, loss of business, loss of actual or anticipated savings, loss of bargain, loss of business reputation, loss of use, cost of capital or costs of substitute goods, facilities or services and loss of opportunity (including opportunities to enter into arrangements with third parties).

“**Credit Agreement**” means a credit agreement for the provision of credit to the Purchaser, which applies to supplies by BGC.

“**Goods**” means goods supplied by BGC in accordance with any Order.

“**GST**” has the same meaning as given to that term under the GST Act.

“**GST Act**” means *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.

“**Insolvency Event**” means the happening of any of these events in relation to a party Defaulting Party (as that term is defined in clause 12):

- (a) the Defaulting Party enters into a compromise or arrangement (or announces one) under section 411 if the *Corporations Act 2001 (Cth)*;
- (b) a managing controller is appointed over the whole (or substantially the whole) of the Defaulting Party’s property;
- (c) the Defaulting Party enters into voluntary administration.

“**Intellectual Property**” means all intellectual property rights including rights relating to know-how, copyright, inventions and patents, trademarks, registered designs, layouts and all other rights resulting from intellectual activity in industrial, scientific, literary or artistic fields.

“**Material**” includes property, information and the subject matter of any category of Intellectual Property rights.

“**Order**” means an order for the supply of Goods and/or Services, whether made by the Purchaser accepting a Quote, or by BGC accepting a purchase order or similar document provided by the Purchaser to BGC, or any other means.

“**Price**” means the purchase price for the Goods and/or Services as specified in the Quote or any tax invoice supplied by BGC.

“**Purchaser**” means any person (including a body corporate) who acquires Goods and/or Services from BGC as specified in the Order.

“**Purchaser Delay**” means a delay to or interruption of the Services as a result of the Purchaser failing to adhere to the construction programme agreed between the parties.

“**Quote**” means a quote (or similar document) provided by BGC to the Purchaser.

“**Services**” means services supplied by BGC in accordance with any Order.

“**Site**” means the site to which the Goods are to be delivered and installed.

“**Specifications**” means any information about the Site, the design of the building or the installation of the Goods provided to BGC by the Purchaser or the Purchaser’s Builder.

“**Terms**” means the terms and conditions set out in this document.

“**Third Party Material**” means Material owned by a third party that is included, embodied in or attached to the Goods.

2. SCOPE

2.1 These Terms form the basis upon which BGC agrees to supply Goods and/or Services. The Purchaser’s Terms, howsoever provided, do not form part of these Terms (even if any representative of BGC signs those Terms and/or they

are annexed to the Terms or any quote or purchase order).

2.2 Any variation or changes to these Terms (other than an update to these Terms by BGC), whether to apply to all subsequent Orders, or any particular Order, may only be made if it:

- (a) is in writing;
- (b) is signed by authorised managers of both parties; and
- (c) expressly states that it is a variation to these Terms, and the parties agree and acknowledge that their representatives and employees that are not authorised managers as referred to in this clause do not have the authority to vary these Terms, or to agree that these Terms do not apply to a supply to which these Terms would otherwise apply.

The Purchaser warrants that:

- (a) the Purchaser is empowered to enter into this Agreement and to do all things that will be required by this Agreement; and
- (b) any person who accepts any Quote on behalf of the Purchaser is a duly authorised agent of the Purchaser.

3. QUOTES

3.1 A Quote will remain valid for 30 days from the date on the Quote, unless otherwise stated in the Quote. Any extension of this period is at the discretion of BGC.

3.2 The Price will be fixed for 60 days from date of acceptance of Quote by the Purchaser. Thereafter, the Price is subject to review by BGC and may rise or fall unless otherwise stipulated in the Quote. If the Price is to increase, BGC will notify the Purchaser of the revised Price upon confirmation of the Order and the delivery date.

3.3 The Purchaser acknowledges and agrees that:

- (a) the provision and cost of scaffolding and/or hoisting facilities, if required, is the responsibility of the Purchaser;
- (b) unless otherwise stated in the Quote, the Price does not include delivery of the Goods by instalments; and
- (c) any special site allowances of which BGC was not advised before accepting the Order, shall be in addition to the Price and will be dealt with as a variation.

4. ORDERS

4.1 Prior to placing an Order, the Purchaser must inform BGC of any specific purpose for which the Goods are to be used.

4.2 Unless other agreed between the parties, all Orders must be:

- (a) signed by the Purchaser or its duly authorised agent;
- (b) contain complete and accurate details of the Goods and/or Services required, and the Purchaser’s delivery requirements; and
- (c) delivered to BGC at the time of acceptance of the Quote.

4.3 The Purchaser must check all details of the Goods and/or Services in the Quote or Order in relation to quantities, description, sizes, dimensions, colour, glass and accessories, and ensure they are in accordance with the Purchaser’s requirements and any Specifications provided.

4.4 The Purchaser must pay the agreed price of all variations to any Orders (or where no price is agreed, the reasonable costs of all variations) in addition to the Price quoted where variations are received or required after the Order has been processed and BGC incurs costs as a result. The reasonable costs of a variation will be calculated by BGC at reasonable rates for labour and materials and will include a reasonable administration charge, allowance for overheads and profit and other costs incurred by BGC as a result of the variation. BGC will take reasonable steps to limit these costs once informed of the variation. Any difference in the measurements, quantities or conditions from those advised by the Purchaser shall constitute a variation.

- 4.5 For any Goods ordered for delivery and later cancelled the Purchaser shall, on demand, pay to BGC all reasonable expenses incurred up to the time of cancellation. BGC's statement of expenses shall be prima facie evidence of its contents.
- 4.6 BGC reserves the right to accept or decline, in whole or in part, any Order placed by the Purchaser.
- 4.7 Time will not be deemed to be the essence of any Order unless expressly agreed between BGC and the Purchaser.

5. SPECIFICATIONS

- 5.1 BGC's standard range of products are produced in accordance with standard industry specifications and are suitable for installing in various Terrain Categories as that term is defined in the relevant Australian Standards. Before placing an Order the Purchaser, or the Purchaser's builder, is responsible for advising BGC in writing if the Goods are required to comply with any other specifications, Terrain Category Ratings, building codes, or Australian Standards.
- 5.2 If the Purchaser or the Purchaser's builder has provided BGC with Specifications, BGC has relied upon those Specifications in making any recommendation. If any Specifications provided are incorrect or incomplete, BGC is not liable for any failure of the Goods to perform arising from incorrect selection of Goods.
- 5.3 The Purchaser warrants to BGC that all Specifications provided to BGC for the selection, manufacture, supply and/or installation of the Goods are accurate and correct and suitable in all respects for the Purchaser's intended use for the Goods.
- 5.4 Unless expressly stated in the Quote, BGC when giving the Quote will not be taken to have approved any Specification as being suitable for any particular purpose.
- 5.5 BGC shall not be liable for and is hereby released from and indemnified by the Purchaser in respect of any claims made by the Purchaser or any third party which arise out of any defects which may develop in the Goods, or any other claims due to the incorrect selection of or Specifications for the Goods.

6. AUSTRALIAN STANDARDS

- 6.1 AS 1288 (as amended or replaced from time to time) AS 1288 currently provides:

If the presence of glass in a door, side panel or a panel capable of being mistaken for a doorway or opening is not made apparent by transoms, colonial bars, other components of the glazing system or other decorative treatment, such as being opaque or patterned, the glass shall be marked to make it visible.

Marking shall be in the form of an opaque band not less than 20mm in height and located so that the vertical distance from the floor level is:

- (a) *not less than 700mm from the upper edge of the band; and*
- (b) *not more than 1200 mm to the lower edge of the band.*

A broken line or patterns using company logos may be an acceptable form of marking provided it meets the other criteria set out in this clause. The dimensions and design of the opaque band that BGC uses can be provided upon request.

Any Goods covered by AS 1288 will have a standard BGC opaque band affixed to or engraved on the glass. That opaque band MUST NOT be removed or altered, and you indemnify BGC against any liability arising from any removal or alteration of the opaque band.

- 6.2 AS 1428.1 – 2009 (as amended or replaced from time to time) Clause 6.6 in AS 1428.1 – 2009 currently provides:

Where there is no chair rail, handrail or transom, all frameless or fully glazed doors, sidelights, including any glazing capable of being mistaken for a doorway or opening, shall be clearly marked for their full width with a solid contrasting line. The contrasting line shall be not less than 75mm wide and shall extend across the full width of the glazing panel. The lower edge of the contrasting line shall

be located between 900mm and 1000mm above the plane of the finished floor level.

Any contrasting line on the glazing shall provide a minimum of 30% luminance contrast when viewed against the floor surfaces within 2m of the glazing on the opposite side.

NOTE: for method of testing luminance contrast, see Appendix B in AS 1428.1 – 2009.

7. DELIVERY & INSTALLATION

- 7.1 BGC and the Purchaser agree that the Goods will be delivered to the Site during normal working hours for the building industry.
- 7.2 The Purchaser shall:
- (a) ensure that the vehicle has a safe, suitable and unrestricted access to the delivery address and the discharge or unloading location; and
- (b) release and indemnify BGC against any loss, damage, cost (including recharges) or liability arising from events occurring while gaining or caused by such access unless solely caused by BGC's negligent act or omission.
- 7.3 The Purchaser acknowledges that all times quoted for delivery are estimates only, and BGC will not be liable for any failure to deliver or for delay in delivery of Goods occasioned by strike, lockout or other industrial dispute, shortage of stock, shortage of labour, lack of skilled labour, delays in transit, fire, flood, hostility, civil commotion or any other cause whatsoever whether or not beyond the control of BGC.
- 7.4 The Purchaser shall not be relieved of any obligation to accept or pay for the Goods or the Services by reason of any delay in delivery.
- 7.5 Where BGC is required to install its Goods on site, BGC will do so:
- (a) in accordance with the Specifications and industry standards;
- (b) subject to clause 14, with regard to the overall construction programme; and
- (c) in a proper and workman-like manner.

The Purchaser agrees to do the following (at the Purchaser's cost) prior to the installation date unless otherwise agreed with BGC in writing:

- (a) comply with BGC's reasonable directions as to the works;
- (b) ensure that the Site is safe and complies with BGC's Site Safety Manual (available on BGC's website) and the Occupational Safety and Health Act 1984 (WA) and Occupational Safety and Health Regulations 1996 (WA), including any other relevant safety legislation, regulations, rules or by-laws;
- (c) prior to the commencement of the Services, ensure all Site preparation work is completed in accordance with all relevant legislation;
- (d) provide adequate vehicular access to the Site; and
- (e) provide a source of power, and hoists, cranes, scaffolding and such other equipment as is reasonably required by BGC in order to perform the Services. The Purchaser shall ensure that all such equipment is in good working order and condition and complies with all legislation applicable to such equipment.
- 7.6 If delivery and/or installation of Goods by BGC is subject to a Purchaser Delay, BGC will be entitled to add to the Price any reasonable additional costs including any storage, handling or demurrage costs arising from the Purchaser Delay.
- 7.7 BGC may subcontract its obligation to install in its absolute discretion. BGC will be responsible for its obligations under this Agreement notwithstanding that subcontracting.

8. PAYMENTS

Terms of payment are cash before delivery unless the Purchaser has entered into a Credit Agreement, in which case the terms of that Credit Agreement will apply.

The Purchaser agrees to pay the amount(s) specified in any Quote accepted by the Purchaser before delivery, or in any tax invoice

issued to the Purchaser (for approved accounts only) without set-off or counterclaim.

9. RISK & RETENTION OF TITLE

- 9.1 The Goods are at the Purchaser's risk from the time the Goods are delivered to the Site.
- 9.2 The Purchaser must insure the Goods for their full replacement value from the time that risk passes to the Purchaser.
BGC will remain the owner of the Goods until the Purchaser has paid for the Goods in full.
- 9.3 Nothing in the Quote gives the Purchaser any lease or right to use BGC's plant and equipment ("Equipment") used to provide the Services under these Terms. Title in the Equipment remains with BGC at all times.

10. WARRANTY

- 10.1 Our Goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the Goods repaired or replaced if the Goods fail to be of acceptable quality and the failure does not amount to a major failure.
- 10.2 BGC makes the following express warranties in relation to Goods it has manufactured and sold. These warranties apply in addition to the statutory guarantees and warranties to which the Purchaser is entitled, including under the Australian Consumer Law.
- 10.3 BGC will repair or replace any Goods which develop a defect or fault, arising out of faulty workmanship or materials, within the warranty period from the date of delivery of the Goods by BGC, subject to the conditions set out below.
- Warranty for Moving Parts
Moving Parts which wear out as a result of normal use are warranted against defects for a period of one (1) year.
- Other Goods
All other Goods are warranted for a period of six (6) years.
- Conditions

The Goods must have:

- (a) been installed and maintained in accordance with BGC's recommendations; and
- (b) not been subject to misuse, physical abuse or neglect.
- 10.4 Aluminium surfaces that have been treated with a powder coat finish provide a much higher resistance to scratching or scuffing. However BGC's warranty does not warrant against fading or colour variations as normal weather conditions can cause coloured surfaces to fade or darken gradually.
- 10.5 BGC's warranty does not apply to glass breakage, except arising from faulty workmanship or materials. It also does not apply to normal wear and tear.
- 10.6 BGC will replace or repair the faulty Goods or part of the Goods under this warranty at its cost. The warranty does not extend to the installation or finishing of a replacement Good. The Purchaser's statutory warranty rights (if they apply) will apply to any installation or finishing.
- 10.7 Any repairs to be done under this warranty must be undertaken by BGC personnel or authorised agent. If repairs are made by any other person this warranty will not apply to those repairs, or the repaired Goods.
- 10.8 This warranty does not apply to goods that are not manufactured or supplied by BGC.
- 10.9 Claims made under this warranty must be made within one (1) month of the defect becoming apparent. Copies of purchase documentation showing the purchase date and details of the defect must be included with the Purchaser's written claim, submitted to BGC Commercial Windows at PO Box 1408 Canning Vale WA 6970, or by facsimile to (08) 9334 4507 or by email to commwin@bgc.com.au. The Purchaser must bear its own costs of submitting its claim.
- 10.10 Where the Purchaser makes any claim under the Warranty or otherwise, the Purchaser agrees to give BGC reasonable access to the Site to investigate their claim.
- 10.11 This warranty is given by Buckeridge Nominees Pty Ltd

(ACN 008 849 581) as trustee for the PAW Unit Trust (ABN 55 519 847 105) trading as BGC Commercial Windows of 85 Vulcan Road, Canning Vale WA 6155.

11. LIABILITY

BGC shall not be liable for and is hereby released from and indemnified by the Purchaser in respect of any claims made by the Purchaser or any third party which arise out of any defects which may develop in the Goods, or any other claims due to:

- (a) faulty handling or placement of the Goods by the Purchaser or any person other than BGC; and
- (b) vehicle (other than BGC's or its contractor's) not being suitable to carry and maintain the Goods in good condition (and including the vehicle being unable to properly and safely carry the Goods).

In the event any Goods supplied by BGC under these Terms are defective, BGC's liability (if any) shall be limited to:

- (a) the Warranty; and
- (b) the Purchaser's rights under the Australian Consumer Law.

To the extent permitted by law, BGC's liability under any condition or warranty which cannot legally be excluded is limited to:

- (a) in the case of Goods:
- (i) the replacement of the Goods;
- (ii) the repair of the Goods (if applicable);
- (iii) the payment of the cost of replacing the Goods; or
- (iv) the payment of the cost of having the Goods repaired (if applicable); or
- (b) in the case of Services:
- (i) supplying the Services again; or
- (ii) paying the cost of having the Services supplied again.

If BGC damages the Site or any buildings or materials on the Site then:

- (a) BGC is not liable unless the Purchaser notifies BGC of the damage within 10 days after the date such damage occurs; and
- (b) the liability of BGC is in any case limited as set out above. Where the Purchaser acquires Goods from BGC for the purpose of on-supplying to another person ("consumer"), BGC shall not be liable for any Consequential Loss suffered by the Purchaser unless otherwise stated in a contract or agreement. However, to the extent required by the Australian Consumer Law, BGC may be liable for any Consequential Loss suffered by the consumer.

The provisions of this clause 11 are subject to the provisions of any statutory condition or warranty which cannot legally be excluded.

12. TERMINATION

12.1 A party ("**Non-defaulting Party**") may terminate these Terms at any time by written notice to the other party ("**Defaulting Party**") if any of the following apply:

- (a) the Defaulting Party fails to carry out any provision of these Terms, the failure is capable of remedy and the Defaulting Party does not remedy that failure within 7 days after written notice to the Defaulting Party requiring it to be remedied; or
- (b) a judgment, order or encumbrance is enforced, or becomes enforceable upon any of the Defaulting Party's property;
- (c) an order for payment is made or judgment for an amount exceeding \$10,000 is entered or signed against the Defaulting Party which is not satisfied within 7 days;
- (d) the Defaulting Party suspends or delays payment of its debts;
- (e) the Defaulting Party is unable to pay its debts as and when they fall due or goes into bankruptcy;
- (f) the Defaulting Party (being a corporation) has a liquidator appointed to it, or has a mortgagee of the corporation assume control of, or a receiver appointed to any of the assets or undertakings of the Defaulting Party (not being an Insolvency Event);
- (g) the Defaulting Party (being a corporation) is deregistered;
- (h) the Defaulting Party breaches a Credit Agreement; or
- (i) to the extent permitted by law, the Defaulting Party is subject to an Insolvency Event.

12.2 These Terms may be terminated by BGC at any time effective immediately upon the giving of notice if a change occurs in the Purchaser's circumstances which, in BGC's reasonable opinion, may have a material adverse effect on the Purchaser's ability to comply with its obligations under these Terms. Examples include (but are not limited to):

- (a) a change in the Purchaser's financial position up and until an Insolvency Event occurring;
- (b) the Purchaser factoring its debts; or
- (c) the Purchaser becoming party to litigation, arbitration or any other administrative proceeding.

12.3 If the Purchaser is the Defaulting Party under these Terms (or where any of the events in clause 12.2 occurs) BGC may, at its option, exercise any or all of the following rights in addition to any other rights it may have under these Terms or at law:

- (a) suspend deliveries of further Goods to the Purchaser whether under these Terms or otherwise;
- (b) suspend performance of the Services whether under these Terms or otherwise; and/or
- (c) withdraw any credit facilities which may have been extended to the Purchaser and require immediate payment of all moneys owed to BGC by the Purchaser.

12.4 The Defaulting Party (or in the case of an event under clause 12.2, the Purchaser) will be responsible for, and will indemnify the Non-Defaulting Party (or BGC, as applicable) against, any damages, costs (including, without limitation, legal fees on a solicitor-client basis), losses and expenses, incurred by the Non-Defaulting Party (or BGC, as applicable) as a result of the breach or event.

12.5 On termination of these Terms under this clause 12, each party retains its rights against the other party in respect of any past breach, in addition to any other rights, powers or remedies provided by law.

13. DISPUTES

If a dispute or difference arises between BGC and the Purchaser in respect of any fact, act, matter or thing arising out of or in any way connected with these Terms and one party requires the dispute or difference to be resolved, then that party will promptly give the other party a written notice giving details of the dispute.

Within 14 days of a party receiving a notice, the parties, and/or their delegates, must meet and attempt to resolve the dispute in good faith. If, within 14 days of the meeting, the dispute is still not resolved, then, either party may proceed to litigation.

In the event of any dispute between the parties, the Purchaser shall pay all undisputed amounts to BGC.

14. FORCE MAJEURE

BGC shall not be liable for any failure to perform or comply with any term of this contract if such failure is caused by any circumstances beyond BGC's control, including, without limitation, lockouts, strikes and other labour disturbances (which shall be considered not to be within BGC's control, even if BGC is a party to such dispute), fire, breakdown of machinery, interruption of supply of utilities and non-delivery of materials from BGC's usual suppliers.

15. INTELLECTUAL PROPERTY

Any pre-existing Intellectual Property rights owned by:

- (a) BGC before the commencement of the Agreement, will remain vested in BGC. No right or licence is granted to the Purchaser to use any of BGC's Intellectual Property rights; and
- (b) the Purchaser before the commencement of the Agreement, will remain vested in the Purchaser.

The Purchaser grants to BGC a non-exclusive, transferable, royalty free licence to use the Purchaser's pre-existing Intellectual Property rights to the extent that use relates to any Goods manufactured or supplied by BGC pursuant to the Agreement.

Subject to any Intellectual Property rights existing in any Third Party Materials, all Intellectual Property rights created by BGC on or after the commencement of the Agreement

will remain vested in BGC notwithstanding those rights were created pursuant to or for use in or with the Goods.

The Purchaser must obtain all necessary copyright and other Intellectual Property permissions before providing BGC with the Specifications. The Purchaser indemnifies BGC against all claims, expenses, losses, damages and costs (on a solicitor and own client basis and whether incurred by or awarded against BGC) that BGC may sustain or incur as a result, whether directly or indirectly, of any infringement of the Intellectual Property rights of any third party.

16. GST

Any expression used in this clause 16 and which is defined in the GST Act has the same meaning in this clause 16.

Unless otherwise expressly stated, all amounts stated to be payable by the Purchaser under the Agreement are exclusive of GST. If GST is imposed on any supply made under or in accordance with the Agreement, the recipient of the taxable supply must pay to BGC an additional amount equal to the GST payable on or for the taxable supply. Payment of the additional amount will be made at the same time as payment for the taxable supply is required to be made in accordance with this document, subject to the provision of a tax invoice by BGC to the recipient.

17. SURVEILLANCE

The Purchaser acknowledges and agrees that BGC may use tracking devices or other surveillance devices at BGC's premises or manufacturing sites and in its vehicles.

18. PRIVACY

BGC collects the Purchaser's personal information for the purpose of providing Goods and/or Services and keeping a record of transactions on our file. Personal information can include sensitive health information as required by BGC from time to time. Our Privacy Policy can be found at www.bgc.com.au.

19. GENERAL

19.1 The Agreement is governed by and is to be construed according to the laws of Western Australia and the parties submit to the exclusive jurisdiction of the courts of Western Australia.

19.2 If any part of the Agreement is, or becomes, void or unenforceable, that part is, or will be, severed from the Agreement so that all parts that are not, or do not become, void or unenforceable remain in full force and effect and are unaffected by that severance.

19.3 A failure to exercise or delay in exercising any right, power or privilege by any party will not operate as a waiver of that right, power or privilege. A single or partial exercise of any right, power or privilege will not preclude any other or further exercise of that right, power or privilege, or the exercise of any right, power or privilege.

19.4 BGC reserves the right to amend these Terms as they will apply to any Orders after the date of amendment. BGC shall give notice of such amendments to the Purchaser in writing (which notice may be given via BGC's website). If the Purchaser places an order with BGC after receiving the amended Terms or they are posted on BGC's website, the Purchaser shall be deemed to have read and unconditionally agreed to the amended Terms.

19.5 The Agreement constitute the entire agreement between the parties with respect to the subject matter of the Agreement and contains all of the representations, warranties, covenants and agreements of the parties in relation to the subject matter of the Agreement as at the date of the Agreement. Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by the Agreement and has no further effect.