

CHANDLER RESOURCES LIMITED

TERMS AND CONDITIONS OF SALE AND SUPPLY OF GOODS

1 Acceptance of Terms

- 1.1 These Terms apply to all sales and supplies of Goods made by the Supplier to the Customer.
- 1.2 The Supplier and the Customer agree that these Terms express the complete agreement between them, and that these Terms will prevail over any Customer's terms and conditions contained in any document between the Supplier and the Customer.
- 1.3 The Supplier reserves the right to amend these Terms from time to time by notice in writing to the Customer, provided that the Supplier may amend any clerical errors in these Terms at any time without notification. The subsequent placing of an order by the Customer will be deemed as acceptance of the replacement Terms.

2 Quotations and Purchase Orders

- 2.1 The Customer may order Goods from the Supplier by submitting a Purchase Order.
- 2.2 The Supplier may provide a Quotation for the Goods to the Customer. Where a Quotation is provided, the Quotation is valid for 30 days from the date of the Quotation, provided that any Quotation may be withdrawn or varied by the Supplier at any time prior to the Customer's acceptance of the Quotation by submission of a Purchase Order.
- 2.3 The Customer's Purchase Order will not be binding on the Supplier unless, and until, it is accepted by the Supplier ("Accepted Purchase Order"), and the Supplier may decline to accept an order placed by the Customer without giving reasons.
- 2.4 Each Accepted Purchase Order constitutes a separate contract for the supply of the particular Goods on these Terms.

3 Deposits, Price and Payment

- 3.1 The Supplier may require the Customer to pay a deposit.
- 3.2 The Customer will pay the:
 - (a) deposit (if any) by the due date specified by the Supplier; and
 - (b) the Price, on the date specified on the Supplier's invoice, or as the Supplier otherwise agrees in writing with the Customer, without set-off or deduction of any kind, into the Supplier's nominated bank account.
- 3.3 Receipt by the Supplier of any form of payment other than cash will not be deemed to be payment until that form of payment has been honoured, cleared or recognised.
- 3.4 Unless otherwise stated, or expressly included in the Supplier's invoice, all amounts are:
 - (a) in New Zealand currency and will be paid in New Zealand currency; and
 - (b) exclusive of all taxes (including goods and services tax ("GST")), levies and duties in connection with the supply of the Goods to the Customer, which shall be the responsibility of the Customer, and the Customer will pay the Supplier an amount equal to the GST and any other taxes, levies and duties payable in respect of the Goods.
- 3.5 If full payment of the Price or any other amount payable by the Customer under these Terms is not made by the Customer on the due date the Supplier may:
 - (a) charge interest at the rate of 5% over and above the current base lending rate then being charged by the Supplier's bankers at the date of the Supplier's invoice, calculated on a daily basis and payable on any moneys outstanding under these Terms from the due date until the date payment is received by the Supplier; and/or
 - (b) withhold further supplies or deliveries of Goods to the Customer until payment of any outstanding amounts is made in full, in each case without prejudice to the Supplier's other rights or remedies in respect of the Customer's default in failing to make payment on the due date.
- 3.6 Any legal or debt collection fees, costs and disbursements (including solicitor client costs) incurred by the Supplier in recovering outstanding monies from the Customer will be recoverable by the Supplier from the Customer.

4 Guarantee

- 4.1 In consideration of the Supplier supplying the Goods to the Customer, the Guarantor(s) who signed Section 7 (Guarantee and Indemnity) of the application accompanying these Terms, unconditionally and irrevocably:
 - (a) guarantees to the Supplier the due and punctual payment of all money which is now or may in the future become payable by the Customer to the Supplier pursuant to these Terms ("Secured Monies") which is not recoverable by the Supplier from the Customer or is not paid to the Supplier on the due date for payment for any reason; and
 - (b) indemnifies the Supplier from and against any and all losses, liabilities claims, damages, costs (including solicitor client costs) and expenses whatsoever suffered or incurred by the Supplier as a result of the Customer failing to pay any Secured Monies when due or in the manner required.The indemnity given in (b) is separate and independent of the guarantee in (a).
- 4.2 Where there is more than one Guarantor, the liability of each of those persons as Guarantor shall be joint and several.
- 4.3 The Guarantor(s) will be liable as principal debtor to the Supplier (not merely as a surety) for the payment of all Secured Monies.
- 4.4 The guarantee and indemnity is a continuing guarantee and indemnity for the whole of the Secured Monies and is not limited to any transaction or arrangement.
- 4.5 The liability of the Guarantor(s) will not be:
 - (a) released by any indulgence, granting of time, waiver, forbearance or other happening which might release a person only liable as a surety; or
 - (b) discharged in any way, limited, diminished or affected by the following:
 - (i) any delay or other indulgence or concession which the Supplier may grant to the Customer or any compromise or variation which the Customer may agree with the Supplier, or by any other act, matter, circumstances or law whereby the Guarantor(s) would but for the provision of this clause have been released from its liability;
 - (ii) the liquidation, bankruptcy or dissolution of the Customer or any other person, or the appointment of any receiver, or the establishment of arrangement in respect of the Supplier or any other person;
 - (iii) the amount of the Secured Monies increasing for any reason;
 - (iv) any alterations to the constitution of the Customer (if any), or any amalgamation, restructure (of any type) of the Customer or any change in the ownership or status of the Customer.
- 4.6 The Secured Monies will be paid:
 - (a) free and clear of any restriction, stipulation or condition and (except to the extent required by law) without any deduction or withholding on account of any tax; and
 - (b) without any deduction or withholding on account of any other amount, whether by way of set-off, counterclaim or otherwise.
- 4.7 The Supplier may apply any money paid by the Customer or the Guarantor(s), or any other person towards satisfaction of the Secured Monies in any manner it thinks fit.
- 4.8 If any Secured Monies received or recovered by the Supplier from the Guarantor(s), the Customer or any other person is or may be set aside, refunded or repaid under any applicable law, then:
 - (a) the Supplier and the Guarantor(s) are to be restored to the position each would be in if that Secured Monies was not set aside, refunded or repaid; and
 - (b) the Supplier may exercise all its rights under the guarantee notwithstanding that it may have signed a discharge (if any).
- 4.9 The Guarantor(s) acknowledges that it has read and understood the terms of the guarantee.

5 Delivery

- 5.1 The Supplier will use reasonable endeavours to have the ordered Goods dispatched and delivered to the Customer on the requested delivery date. However, any date or time requested for delivery by the Customer or quoted for delivery of the Goods by the Supplier is an estimate only and cannot be treated as a condition of sale or deemed to be of essence. If delivery of the Goods is delayed for any reason outside the Supplier's control (including without limitation, the need to obtain any documents or certificates to permit export or importation of the Goods or a Force Majeure Event), the Supplier will not be responsible or liable in any way to the Customer or to any other party for loss suffered due to that delay.

- 5.2 Delivery of the Goods shall be made at the place indicated in the Quotation or, if no place is indicated in the Quotation (or no Quotation was issued), at the place indicated in the Accepted Purchase Order, or if no place is indicated in the Accepted Purchase Order, delivery will be deemed to be made when the Goods are ready to be dispatched from Supplier's premises.
- 5.3 In the case of export sales (being sales of Goods outside of New Zealand), delivery will, unless otherwise stated in the Quotation or the Supplier's invoice, be complete when the Goods effectively pass the ship's rail at the port of the shipment country or arrive at airport of the shipment country.
- 5.4 If the Customer fails or refuses or indicates to the Supplier that it will fail or refuse to take or accept delivery of the Goods, then the Goods will be deemed to have been delivered when the Supplier was willing to deliver them. Without prejudice to any other rights and remedies which it may have, the Supplier may charge storage, transportation or any other related costs or expenses if the Customer fails or refuses to take or accept or permit delivery or indicates to the Supplier that it will fail or refuse to take or accept or permit delivery at the time or times that the Supplier is able to deliver the Goods.
- 5.5 The Supplier may deliver the Goods by instalments. If delivery is made by instalments the Customer will not be entitled to cancel or terminate any Accepted Purchase Order.
- 6 Claims for Discrepancy or Defective Goods and/or Product Recalls**
- 6.1 If the Customer disputes the quality of the Goods and/or compliance of the Goods with the description and/or specifications for those Goods ("Discrepancy"), the Customer must, at the Supplier's request:
- (a) provide sufficient detail and evidence of the Discrepancy to the Supplier for its review and investigation; and/or
 - (b) provide the Supplier (or its authorised personnel) with access to the premises at which the relevant Goods are stored to carry out its own testing and/or investigations to verify the quality and/or compliance of the relevant Goods to ascertain if there is a Discrepancy.
- The Customer acknowledges and agrees that variances in the quality and/or compliance of the Goods that is within customary tolerances will not constitute a Discrepancy in the Goods.
- 6.2 In the event the Supplier is satisfied, in its sole discretion, that there is a Discrepancy in the Goods, the Supplier may:
- (a) refund to the Customer any part of the Price that may have been made in respect of the relevant Goods;
 - (b) arrange for the replacement Goods to be supplied to the Customer;
 - (c) at its cost, issue a product recall notice for the relevant Goods, in which case, the Customer agrees to co-operate fully with the Supplier in respect of any Goods that have been recalled;
 - (d) at its cost, require the Customer to re-deliver the relevant Goods to the Supplier or to any other place specified by the Supplier; and/or
 - (e) at its cost, recover possession of any such Goods supplied to the Customer and dispose of them, resell the Goods, or retain them for its own benefit, in which case the Customer irrevocably authorises the Supplier and/or its authorised personnel to enter the Customer's premises (or any premises under the control of the Customer or any agent of the Customer in which the Goods are stored) to take possession of the Goods.
- 6.3 All claims for loss, deterioration, adjustments for short or incorrect delivery, or a Discrepancy, are to be made by the Customer in writing within 30 days of the Goods being delivered and must be supported by such evidence as the Supplier may reasonably require.
- 6.4 The Customer shall not be entitled to return Goods which have been altered or otherwise processed or damaged in any way after collection or delivery.
- 6.5 To the extent permitted by law, Goods will not be accepted for return other than in accordance with this clause 6.
- 7 Risk, Ownership and Insurance**
- 7.1 Possession and risk of any loss, damage or deterioration of or to the Goods will be the Customer's responsibility from the time/date of delivery of the Goods in accordance with clause 5.
- 7.2 Ownership of the Goods will remain with the Supplier until the Customer has paid the Supplier for the Goods in full.
- 7.3 Until the Customer pays for the Goods in full and becomes the legal and beneficial owner of the Goods, the Customer will:
- (a) to the extent possible given the nature of the Goods, store the Goods (at no cost to the Supplier) in such a way that they are clearly identified as belonging to the Supplier;
 - (b) ensure the Goods are kept in good condition;
 - (c) secure the Goods from risk, damage and theft;
 - (d) insure the Goods for their current market value and hold the benefit of any such insurance on trust for the Supplier and pay the proceeds of any such insurance to the Supplier in the event the Goods are lost, damaged or destroyed;
 - (e) hold the goods as bailee of the Supplier; and
 - (f) place the proceeds of sale of the Goods (where the Goods are on-sold by the Customer) in a separate bank account for the benefit of the Supplier and will not assert (or have a right to assert) against the Supplier that the Customer owns the Goods or the proceeds of sale of the Goods or any part of them.
- 8 Default**
- 8.1 Irrespective of any other rights or remedies which the Supplier may have, if:
- (a) any moneys payable to Supplier is overdue;
 - (b) the Customer is in default in the performance of its obligations under these Terms; or
 - (c) the Customer becomes insolvent, or is subject to the appointment of a receiver, manager, liquidator, or statutory manager, or commits an act of bankruptcy, or enters a scheme of arrangement with its creditors,
- then the Supplier, without prejudice to any other right it has at law or in equity, may, at its option, do one or more of the following:
- (d) require copies of any records available which may assist the Supplier to trace the proceeds of sale of the Goods and the Customer agrees to provide any such records;
 - (e) cease to supply any Goods to the Customer;
 - (f) cancel any outstanding order for the Customer irrespective of whether or not such order has been accepted by the Supplier;
 - (g) require the Customer to re-deliver the Goods to the Supplier and the Customer agrees to re-deliver any such Goods (at the Customer's cost); and/or
 - (h) recover possession of any Goods supplied to the Customer and dispose of them or retain them for its own benefit, and all amounts owing to the Supplier from the Customer, whether due for payment or not, will become immediately due and payable. The Customer irrevocably authorises the Supplier or its authorised personnel to enter the Customer's premises (or any premises under the control of the Customer or any agent of the Customer in which the Goods are stored) and use reasonable force to take possession of the Goods.
- 9 Liability on Claims**
- 9.1 The Supplier's liability to the Customer (whether in contract, tort, equity or otherwise) for any claim, loss, damage and/or expense suffered or incurred in connection with these Terms or for any non-compliance of the Goods, will not in any circumstances exceed the total Price paid by the Customer for the Goods under the relevant Accepted Purchase Order.
- 9.2 In no event will the Supplier be liable for any consequential, indirect or special damage or loss of any kind.
- 9.3 The Customer will indemnify the Supplier against:
- (a) all claims made by third parties against the Supplier regarding the on sale of the Goods and the sale of products that incorporate the Goods by the Customer; and
 - (b) any loss suffered or incurred by the Supplier which is caused by the acts or omissions of the Customer or the Customer's employees in relation to the Goods after delivery of the Goods has been made by the Supplier.
- 10 Warranties**
- 10.1 The Supplier endeavours to comply with the CETIE Standards in relation to its Goods, but otherwise, to the fullest extent permissible at law expressly excludes, any warranties, conditions, representations or guarantees whether implied by statute, common law or custom of the trade or otherwise, including implied warranties, guarantees or conditions of merchantability and/or fitness for particular purposes.

11 Personal Property Securities Act (“PPSA”)

11.1 The Customer acknowledges and agrees that:

- (a) these Terms constitute a security agreement for the purposes of the PPSA; and
- (b) a security interest is taken in all Goods previously supplied by the Supplier to the Customer (if any) and all Goods that will be supplied in the future by the Supplier to the Customer.

11.2 The Customer undertakes to:

- (a) sign any further documents and/or provide any further information (such information to be complete, accurate and up to date in all respects) which the Supplier may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
- (b) indemnify, and upon demand reimburse, the Supplier for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Goods charged;
- (c) not register a financing change statement without the prior written consent of the Supplier; and
- (d) immediately advise the Supplier of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.

11.3 The Supplier and the Customer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to any security interest created by these Terms.

11.4 The Customer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129 and 131 of the PPSA.

11.5 Unless otherwise agreed to in writing by the Supplier, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.

11.6 The Customer will unconditionally ratify any actions taken by the Supplier under this clause 11.

12 Force Majeure

12.1 Neither party will be responsible or liable for any failure or delay in the performance of its obligations where such failure or delay is occasioned by a Force Majeure Event.

12.2 Nothing in clause 12.1 relieves the Customer of its obligation to pay any money due and owing to the Supplier.

13 Consumer Guarantees Act and Fair Trading Act

13.1 Where the Customer is “in trade” within the meaning of the Fair Trading Act 1986 or the Consumer Guarantees Act 1993 (as the case may be) and the Goods are being acquired by the Customer for business purposes, the Supplier and the Customer agree to contract out of the Consumer Guarantees Act 1993 and sections 9, 12A, 13 and 14 of the Fair Trading Act 1986.

14 Intellectual Property

14.1 The Customer and the Supplier acknowledge that the intellectual property of the other party (and any developments, modifications, adaptations, enhancements, or extensions of that intellectual property) is owned by, or proprietary to the other party (or its licensors) and will remain owned exclusively by the other party and its licensors (as applicable).

14.2 Where the Supplier is to supply Goods that contain the Customer’s brands, trade marks, logos and/or designs, the Customer grants a non-exclusive licence to the Supplier (and its agents) to use the Customer’s brands, trade marks, logos and/or designs for the purpose of supplying the Goods to the Customer pursuant to the Accepted Purchase Order and these Terms. The Supplier warrants that it is able to grant the licence set out in this clause 14.2, and will indemnify the Supplier against all claims, losses, damages, costs (including solicitor client costs) and expenses incurred or suffered by the Supplier arising out of or in connection with the Supplier’s use of the Customer’s brands, trade marks, logos and/or designs.

15 General

15.1 If any provision of these Terms is judged invalid or unenforceable in a jurisdiction it is severed for that jurisdiction and the remaining provisions of these Terms will continue to operate.

15.2 Any failure by a party to enforce any of its rights pursuant to these Terms, or any forbearance, delay or indulgence granted by that party to the other party will not be construed as a waiver of the first party’s rights under these Terms.

15.3 No waiver will be effective unless it is in writing and signed by a duly authorised officer of the party giving the waiver. Any waiver will apply only to the particular matter in respect of which it is given.

15.4 Neither party may assign or transfer any of their rights or obligations (in whole or in part) under these Terms without the prior written consent of the other party.

15.5 These Terms will be governed by, and construed in accordance with, the laws of New Zealand and the Supplier and the Customer submit to the exclusive jurisdiction of the New Zealand Courts.

16 Definitions

16.1 In these terms and conditions:

Customer means each person, firm, company or other entity that orders and/or purchases Goods from the Supplier as named in the application accompanying these Terms or a Supplier invoice.

Force Majeure Event means any strike, lockout, delays in transit, breakdowns or loss of vessel carrying the Goods, failure or delay by the Customer in performing any of its obligations under these Terms, failure or delays by suppliers or manufacturers, fire, acts of God, natural disaster, riot, terrorism, malicious damage, hostilities, pandemics, epidemics, national or local government lockdowns, other legislative or governmental prohibitions or restrictions, or other causes whatsoever (whether similar in nature or not to the foregoing) beyond the Supplier’s reasonable control.

Goods means all goods and/or services described in an Accepted Purchase Order and/or Supplier’s Invoice.

Price means the price of Goods specified in the Supplier’s invoice.

Purchase Order means a purchase order (or alternative form of order or offer) from the Customer to purchase Goods from the Supplier.

Quotation means a written quote from the Supplier to the Customer for the cost of the Goods.

Supplier means Chandler Resources Limited trading as Chandler Glass and Packaging.

Terms means these terms and conditions of sale and supply.