

The following terms and conditions are applicable to the provision of Retrofitting Double Glazed Units (DGU) into existing Timber & Aluminium frames plus together with any supply and installation of new Aluminium Windows and Doors and, all associated materials. (“the Retrofit Work”) by Thermoglaz NZ Limited (trading as “Thermoglaz” hereinafter referred to as “Thermoglaz”).

No other terms, conditions or deviations from these terms and conditions shall be binding unless accepted in writing by an authorised representative of Thermoglaz. In the event of a conflict between these terms and conditions and any accompanying documentation, the terms and conditions of the accompanying documentation shall prevail.

## 1. Plans and Specifications

Copyright and ownership in all drawings, specifications and other technical information provided by Thermoglaz in connection with the accepted sales quote is vested in Thermoglaz. Where Thermoglaz has followed plans and specifications provided by the Customer or their agent, the Customer shall indemnify Thermoglaz against all damages, penalties, costs and expenses in respect of which Thermoglaz may become liable through the utilisation of those plans and specifications.

## 2. Quotation and Acceptance

Thermoglaz shall produce a formal quotation for the Customer for The Retrofit Work. The quotation shall be subject to the clarifications and exclusions set out in the documentation accompanying these terms and conditions and shall be valid for a period of thirty (30) days from the date specified on the quotation. The Customer shall accept the quotation by signing the acceptance form accompanying the quotation and signing a copy of any plans and specifications attached to the quotation, if provided. The acceptance of the quotation in the manner specified in this clause shall constitute a binding contract and acceptance of the terms and conditions contained herein.

## 3. Variations

Except as expressly provided in these terms and conditions, no variation or alteration to the scope of The Retrofit Work shall be binding on the parties unless recorded in writing and signed by both parties, including any adjustment to the contract price.

Any changes required as a result of any ambiguous drawings or any other documentation provided by the Customer, or their agent will be treated as a variation to The Retrofit Work.

## 4. Cancellation

In the event that the Customer wishes to cancel the contract for The Retrofit Work at any time after acceptance of the quotation, the Customer shall pay all actual and reasonable costs and expenses incurred by Thermoglaz together with a reasonable administration fee, provided that the Customer shall not be entitled to cancel the contract once The Retrofit Work has commenced without the prior consent in writing of Thermoglaz.

Thermoglaz shall, without any liability, and without any prejudice to any other right it has in law or equity, have the right by notice to suspend or cancel in whole or in part any contract for the supply of goods or services to the Customer if the Customer fails to pay any money owing after the due date, or if the Customer commits an act of bankruptcy as defined in section 19 of the Insolvency Act

2006, or if liquidation proceedings are commenced in relation to the Customer, or if the Customer shall otherwise become bankrupt or insolvent, or if any other event occurs which

evidences a lack of credit worthiness or insolvency on the part of the Customer. Any cancellation or suspension by Thermoglaz pursuant to this clause shall not affect Thermoglaz's claim for money due at the time of cancellation or suspension or for damages for any breach of any terms of this Thermoglaz or the Customer's obligations to Thermoglaz under these terms and conditions.

## **5. Price**

The price of the Retrofit Work shall be the price stated in the quotation together with all extras selected by the Customer and subject to variation in accordance with clause 3. The price quoted for the Retrofit Work includes GST.

Where no price is stated in writing or agreed, the goods and/or services shall be deemed to be sold and/or supplied at the current price applying at the date upon which the invoice for the goods or services is issued to the Customer.

Notwithstanding anything contained in this clause or the quotation, the price of the goods and/or services may be increased by the amount of any reasonable increase in cost of supply of the goods or services between the date upon which the quotation is delivered to the Customer and the date upon which the goods or services are supplied and where such increase is beyond the reasonable control of Thermoglaz.

## **6. Payment**

Payment for the Retrofit Work shall be made in full on or before within seven (7) days of the date of the invoice.

Thermoglaz reserves the right to progress invoice the Customer in the event that the project or project installation time frame spans across the end of a calendar month and the value of that invoice will be equivalent to the Retrofit Work completed at that time.

Thermoglaz reserves the right to charge interest on all overdue accounts at the daily rate of 1.5 times Thermoglaz's bank total overdraft interest rate from the due date for payment until the date when payment is actually made and all expenses and costs (including legal costs as between solicitor and client and debt collection fees) incurred by Thermoglaz in obtaining or attempting to obtain a remedy for the failure to pay.

The Customer may not deduct or withhold any amount (whether by way of a set-off, counterclaim or otherwise) from any money owing to Thermoglaz. Receipt of a payment, bill of exchange, or other negotiable instrument shall not constitute payment until such negotiable instrument is paid in full.

The Customer expressly acknowledges that no retentions shall apply unless provision for a retention is incorporated within the prevailing Conditions of Thermoglaz.

## **7. Commencement and Completion**

The Customer acknowledges that any estimates as to the time frames for the commencement and completion of the Retrofit Work are approximate only. Thermoglaz will use all reasonable endeavours to ensure the Retrofit Work is commenced and completed within the time frame

specified but shall not be liable for any delay or failure to do so. Thermoglaz shall not be responsible for any delays caused by separate or nominated sub-contractors engaged by the Customer.

Should any delays occur the Customer agrees that all costs incurred by Thermoglaz and resulting from such delays will be charged as a variation to the Thermoglaz price.

## **8. Repair of Defects**

Where the Retrofit Work undertaken is of a commercial nature Thermoglaz shall at its sole cost rectify any defects in the materials or workmanship which are notified to Thermoglaz within ninety (90) days of completion of the Retrofit Work and within a reasonable time of receiving written notification of those defects. Thermoglaz shall not be liable under this clause to remedy:

- defects covered by a manufacturer's or supplier's guarantee that is available to and may be enforced by the Customer;
- defects in or damage caused by work undertaken by the Customer or any of the Customer's contractors.

Where the Retrofit Work is of a residential nature any notification by the Customer in writing to Thermoglaz within twelve (12) months from the completion of the Retrofit Work shall be rectified by Thermoglaz at Thermoglaz's costs within a reasonable time of notification by the Customer of the defect. Thermoglaz shall not be liable under this clause to remedy:

- defects covered by a manufacturer's or supplier's guarantee that is available to and may be enforced by the Customer;
- defects in or damage caused by work undertaken by the Customer or any of the Customer's contractors.

## **9. Risk and Insurance**

Any goods supplied by Thermoglaz shall be at the sole risk of Thermoglaz until the earlier of payment for the goods and delivery of the goods to the Customer.

If the Retrofit Work involves an extension or alteration to existing premises, the Customer shall be solely responsible for arranging an extension of the Customer's insurance policy to provide insurance cover for all associated risks.

## **10. Ownership**

Ownership of any goods and/or materials supplied as part of the Retrofit Work shall not pass to the Customer until all amounts owing by the Customer to Thermoglaz in respect of the goods and/or materials have been paid in full.

The Customer acknowledges and agrees that by assenting to these terms & conditions, the Customer grants a Purchase Money Security Interest to Thermoglaz, as that term is defined in the Personal Property Securities Act 1999 ("PPSA"), in all goods and/or materials supplied by Thermoglaz to the Customer.

The Customer irrevocably undertakes to sign any further documents and/or provide any further information (which information the Customer warrants to be complete, accurate and up to date in

all respects) which Thermoglaz may reasonably require to enable registration of a financing statement or financing change statement on the Personal Property Securities Register.

The costs of registering a financing statement or a financing change statement shall be met by the Customer and may, where applicable, be debited against the Customer's credit account with Thermoglaz.

The Customer shall not agree to allow any person to register a financing statement over any of the goods supplied by Thermoglaz without the prior written consent of Thermoglaz and will immediately notify Thermoglaz in writing if the Customer becomes aware of any person taking steps to register a financing statement in relation to such goods.

*The Customer:*

(a) waives its rights to:

(i) receive a copy of any verification statement;

(ii) receive a copy of any financing change statement:

(b) If the Goods are for the Customer's business use, the Customer agrees, to the extent Part 9 of the PPSA applies, that it will have no rights under Part 9 of the PPSA.

The Customer irrevocably grants to Thermoglaz the right to enter upon the Customer's property or premises, without notice, and without being in any way liable to the Customer or to any third party, if Thermoglaz has cause to exercise any of Thermoglaz's rights under section 109 of the PPSA, and the Customer shall indemnify Thermoglaz from any claims made by any third party as a result of such exercise.

Thermoglaz and the Customer agree that nothing in sections 114(1)(a), 116, 117(1)(c), 119, 120(2), 121, 125, 126, 127, 129, 131, and 132 of the PPSA will apply to these terms and conditions, or the security interest under these terms and conditions.

The Customer will be responsible to Thermoglaz for any costs or damages incurred in reclaiming and disposing of the unpaid goods and/or materials. Such costs include but are not limited to loss in value, cost or repossession, damaged premises and recovery, storage, resale and legal costs, on a solicitor and client basis. These costs shall be recoverable as a debt due to Thermoglaz by the Customer.

## **11. Warranty and Liability**

The warranties, descriptions, representations, or conditions whether implied by law, trade, custom or otherwise are, and all other liability of Thermoglaz, whether in tort (including negligence), contract or otherwise is, expressly excluded to the fullest extent permitted by law.

Insofar as Thermoglaz may be liable, notwithstanding anything contained in these terms and conditions, to the extent permitted by law the total liability of the contract whether in tort (including negligence), contract or otherwise for any loss, damage or injury arising directly or indirectly out of completion of the Retrofit Work or any other breach of Thermoglaz's obligations is limited to the lesser of:

- (a) to the price of goods and/or materials complained of;
- (b) the cost of completing any necessary repairs/remedial work; or
- (c) the actual loss or damage suffered by the Customer.

Except where statute expressly requires otherwise Thermoglaz is not liable in any event for any loss of profits, consequential, indirect or special damage, loss or injury of any kind suffered by the Customer or any other person.

## **12. Collection and Use of Information**

The Customer authorises Thermoglaz to collect, retain and use any information about the Customer for the purpose of assessing the Customer's creditworthiness and/or enforcing any rights under this contract.

The Customer authorises Thermoglaz to disclose any information obtained to any person for the purposes set out in this clause. Where the Customer is a natural person, the authorities under this clause are authorities or consents for the purposes of the Privacy Act 1993.

## **13. Miscellaneous**

Thermoglaz shall not be liable for delay or failure to perform its obligations if the cause of the delay or failure is beyond its control.

Failure by Thermoglaz to enforce any of the terms and conditions contained in this Thermoglaz shall not be deemed to be a waiver of any of the rights or obligations Thermoglaz has under this contract.

If any provision of this contract shall be invalid, void or illegal or unenforceable, the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or implied.

The Customer may not assign any of its rights or obligations under this contract without the prior written consent of Thermoglaz.

### ***Build Work***

Thermoglaz does not conduct any Retro Double-Glazing work that requires a Licenced Building Practitioner (LBP) or a building consent. Retro Fitting of Double Glazing is conducted in accordance with the recommendations of the New Zealand Window Association, and generally accepted industry standards.

Thermoglaz does as part of its services; manufacture, supply, and install new Aluminium windows and doors to existing properties, where those properties are having existing windows or doors removed and fully replaced with new. In this instance there is no requirement for a building consent or LBP where the width of the window or door cavity remains unchanged, and the new installation is not affecting the structural integrity of the building. New Installations as mentioned above are conducted in accordance with the recommendations of the New Zealand Window Associating, and in accordance with the requirements of the NZ Building Code.

Where there is a change to the width of a Window or Door cavity, or a new wall cavity is required for the installation of new Windows or Doors, then the responsibility rests with the property owner to

engage a LBP and, obtain any council and/or building consents required to have that work undertaken.

## **14. Personal Guarantee**

In consideration for Thermoglaz agreeing to complete the Retrofit Work at the request of the Customer, where the Customer is a company or trust, the directors or trustees signing this contract also sign this contract in their personal capacity and jointly and severally personally undertake as principal debtors to Thermoglaz the payment of any and all moneys owed by the Customer to Thermoglaz and indemnify Thermoglaz against non-payment by the Customer.

## **15. Governing Law**

The within terms and conditions shall be governed by and construed in accordance with the laws of New Zealand and the parties shall submit to the exclusive jurisdiction of the New Zealand Courts.

## **16. Agency**

The Customer authorises Thermoglaz to contract either as principal or agent for the provision of goods or services.

Where Thermoglaz enters into a contract of the type referred to this clause the Customer agrees to pay any amounts due under that contract.

Any list of proposed sub-contractors supplied by Thermoglaz is provided on a without prejudice basis and Thermoglaz reserves the exclusive right to change sub-contractors without adjustment to the quotation.

## **17. Dispute Resolution**

In the event of a dispute or disagreement arising between Thermoglaz and the Customer the party with a grievance may give written notice to the other party specifying the nature of the dispute or disagreement, the remedy sought and requiring that the dispute or disagreement be determined and settled in accordance with this clause.

On receipt of the notice, the parties shall each appoint a representative who has authority to determine the grievance or dispute, and those two representatives shall meet as soon as reasonably possible to see if they can determine the grievance. All discussions, meetings and correspondence between the two representatives shall be deemed without prejudice and without concession of liability and shall not be used by either party in any later proceedings unless:

- (a) Both parties agree, or
- (b) The two representatives reach agreement, but one party fails to honour such agreement.

If the two representatives cannot within fourteen (14) days of being appointed reach agreement on how the grievance or dispute is to be determined, the parties shall refer the dispute to an independent expert who is acceptable to both parties. If the parties cannot or do not agree on an

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independent expert within three (3) days of the first suggestion of a suitable person then the matter will be referred to “The Fairway Resolution Team” as the independent expert.

*The independent expert shall:*

- (a) Set his or her own rules and procedure for the resolution of the grievance or disagreement
- (b) At all times act in good faith and in an unbiased way
- (c) Promptly hear and determine the dispute
- (d) Provide a written decision (with reasons for that decision) if requested by either party.

The independent expert’s:

- (a) Decision shall be binding on both parties:
- (b) Costs shall be paid equally by the parties unless the independent expert decides otherwise in his or her decision.

Notwithstanding anything contained in clause 17, disputes in excess of ten thousand dollars (\$10,000) shall be referred at Thermoglaz’s sole discretion to arbitration under the Arbitration Act 1996 or any subsequent Act passed in its place.