

AGREEMENT TO SUPPLY



1. BASIS OF PURCHASE ORDER.

1.1 This Purchase Order may act as a separate contract between the person, company or firm to whom this purchase order is delivered ("the Supplier") and Tanning Pty Ltd (T/A Project Windows & Doors) ("Project Windows"), if no previous supply agreement exists. If one does, then this shall be deemed for all purposes to have been created for the sole purpose of implementing an agreement between the Supplier and Project Windows upon the terms of:

- a) The supply agreement previously entered into between the Supplier and Project Windows; or, if no such document has been entered into
- b) The terms of Project Windows standard supply agreement current at the date of issue of this Purchase order.

1.2 This Purchase order is provided on the understanding that the Supplier ordinarily provides work of type sought in this purchase order to the public generally. The Supplier, by accepting this Purchase order warrants that it is so.

2. PERFORMANCE OF WORKS

2.1 In the performance of the services the Supplier shall:

- a) Ensure that it and its servants, agents, contractors and employees comply with all laws, regulations, ordinances, bylaws and all Australian standards and requirements of responsible authorities.
- b) Ensure that it and its servants, agents, contractors and employees engaged in providing the services are properly trained to perform their duties safely and without risk of injury to any person in the performance of the Services.
- c) Conduct all appropriate hazard identification and risk assessment reviews prior to performing any work; and
- d) Immediately notify Project Windows in writing of any circumstances likely to expose any person to risk of injury and of any incident or accident which resulted or may have resulted in any person being exposed to risk of injury.

2.2 The Supplier will ensure that:

- a) All work required is performed with due care, skill and diligence and in a safe, proper and workman like manner;
- b) The work is performed to the same standards of work quality and quality of materials as has been used in the construction of Project Windows's products;
- c) All goods supplied or incorporated by the Supplier are new, fit for the purpose for which things are supplied and of merchantable quality.
- d) It does not perform work pursuant to a particular purchase order if the site is not suitable or suitably prepared for such work; and
- e) If the Supplier delegates the performance of any part of the work to a person other than an employee of the Supplier, the Supplier shall advise Project Windows in writing.

3.0 INDEMNITIES

3.1 The Supplier indemnifies and will keep indemnified Project Windows against all claims, liabilities, loss, cost and expense the Supplier may incur arising out of breach

of any of the Supplier's obligations under this agreement, or at Law. Without limiting the generality of this clause the indemnity extends to:

- a) Making good any defects in material supplied by or workmanship of the Supplier;
- b) Making good any damage that the Supplier occasions to other work or property,
- c) Cleaning up and removing from site all debris and rubbish created by the Supplier at the building site; and
- d) All costs relating from the performance of works contrary to clause 2.2(d) above.

4.0 INSURANCE

4.1 The Supplier will at the Supplier's cost for the term of this agreement effect and maintain a public liability insurance policy (with an insurer reasonably acceptable to Project Windows) to cover the Supplier, the Supplier's contractors, Supplier's officers, employees, agents and with a limit of at least \$5 million per event. Such policy will be endorsed to note the interests of Project Windows if they so request it.

4.2 The Supplier will provide on request from Project Windows, a copy of the certificate of currency and terms and conditions of such insurance and notify immediately of any cancellation or non-renewal of such policy.

5.0 PAYMENT

5.1 Project Windows will pay the Supplier for work performed pursuant to a purchase order;

- a) the amount specified on the Purchase Order, or
- b) if no amount is specified, a fair and reasonable price calculated at Project Windows's usual rates;

Upon completion of all of the work specified in that purchase order and upon receipt of:

- i) A tax invoice quoting Project Windows's purchase order number and job number, if provided; and
- ii) A written statement specifying the names of the persons engaged in performing the Work and the days upon which the Work was performed.

Unless otherwise agreed in writing, compliance with conditions i) and ii) shall be a condition precedent to the Supplier's right to payment.

5.2 If Project Windows considers the amount invoiced by the Supplier exceeds the amount due, Project Windows may deliver to the Supplier a recipient created adjustment note. If the Supplier does not with in seven days of receiving the recipient created adjustment note dispute the accuracy of the adjustment note by notice in writing to Project Windows, the adjustment note shall be deemed to conclusively set out the rights and obligations of the parties in respect of the transaction(s) identified in such adjustment note.

6.0 DISPUTES

6.1 If any Dispute or difference arises between Project Windows and the Supplier in any way arising out of this supply agreement or the performance of Work by the Supplier then;

- a) either party shall send by registered mail to the other party a notice of dispute in writing, clearly identifying details of the dispute or difference;

- b) within 21 days of a notice of a dispute, the parties shall confer at least once to attempt to resolve the dispute or difference or agree on methods to resolve the dispute or difference;
- c) if the dispute or difference has not been resolved or an agreement reached on methods to resolve the dispute or difference, the dispute shall be referred to the independent expert.

6.2 The Independent Expert will be;

- a) such persons as the parties may agree upon; and
- b) in the event the parties do not agree upon the identity of the Independent Expert, such a person as Project Windows shall appoint. In doing so, it shall:
 - i) endeavor to act reasonably; and
 - ii) endeavor to appoint a person who has expertise as to some or all of the matters the subject of the dispute or difference.

6.3 The Independent Expert shall determine in writing the dispute or difference acting as an expert and not an arbitrator and also which of the parties should bear the costs of his determinations and in what proportions they should bear such costs.

6.4 The determinations of the Independent Expert shall be conclusive and binding upon the parties.

6.5 The fees and expenses of the Independent Expert shall be in the first instance be paid by the party who refers the dispute or difference to the Independent Expert.

6.6 Neither party shall become a party to any suit at law or in equity against the other until the Independent Expert has made a determination in writing in accordance with this Supply Agreement.

7.0 INTERPRETATION

7.1 In this supply Agreement:

"Site" means all aspects of the property at which work is to be performed, including works performed by other Suppliers.

"Work" means any Work associated with the construction of Dwellings for customers, and includes provision of Labour and/or Plant and/or materials.

7.2 Wavier

a) Any Wavier of or representation not to rely upon any term or condition of this supply agreement must be in writing and will only be effective to the extent that it is set out in writing.

b) Each Party represents to the other that it will not act upon any wavier of or representation not to rely upon any term or condition of this Supply Agreement not in writing.

c) A Failure by one party to take action in the event of a breach of this supply agreement by another party (whether expressed or implied) will not operate as a waiver of another or continuing breach of any other condition of this supply agreement (whether expressed or implied) nor prevent that party from later taking legal action as a result of that breach.

7.3 Governing Law

This agreement is governed by, and will be construed in accordance with the laws from time to time in force in the State of Victoria and each party irrevocably and unconditionally submits to the non-executive jurisdiction of the courts of Victoria and courts of appeal from them.