

LS1 Terms and Conditions



Effective: 17/05/2023

1. Particulars

- G.James is committed to fulfilling all of its statutory requirements including its obligations under the Competition and Consumer Act, to giving the guarantees provided for in this document, and to backing the Product with a reputation gained from successfully servicing Clients' needs since 1917.
- G.James agrees with the Client to carry out works including the supply of goods/and or services ("the product") for a contract price ("price"). A contract will be deemed to have been made upon receipt by G.James of an oral or written order from a Client for the Product, and acceptance of that order by G.James either in writing, or by delivery of goods to the Client. These terms and conditions ("the terms") apply to that contract.
- "G.James" means any of the companies in the G.James Group of Companies including:
 - o G.James Glass & Aluminium (Qld) Pty Ltd A.C.N. 010 828 056
 - o G.James Australia Pty Ltd A.C.N. 010 823 542
 - o G.James Glass & Aluminium Pty Ltd A.C.N. 010 828 369
 - o G.James Safety Glass Pty Ltd A.C.N. 001 230 039
 - o G.James Extrusion Co Pty Ltd A.C.N. 010 828 234
 - o Cheras Industries Pty Ltd A.C.N. 009 674 677
 - o G.James Safety Glass (Qld) Pty Ltd A.C.N. 010 828 065
 - o G. James (N.Z.) Limited.
 - o Contract Glass & Aluminium Pty. Ltd ACN 010 828 047
- The Client acknowledges that G.James Australia Pty. Ltd., (A.C.N. 010 823 542) is the management company for the G.James group and is authorised to collect all debts owing to each of the operating companies, to receive and give good discharge for the same and to take legal proceedings in its own name for and on behalf of the respective operating company to enforce payment thereof. Payment is to be made to G.James at 1084 Kingsford Smith Drive, Eagle Farm, Brisbane. Subject to these "terms" the following descriptions shall apply:
 - o the 'supply of goods' shall include as applicable, the supply of any item produced by G.James or a third party including any necessary modification and/or fabrication for delivery to the project.
 - o the 'supply of services' shall include the installation of goods provided by G.James pursuant to clause 1.4.1. or any works to items already supplied to the project and as provided for in the agreement
 - o the 'supply of goods and/or services' shall include any combination of the items referred to in 1.4.1 and 1.4.2.

2. Assignment

- Neither party may assign its interest in the contract at any time without the written consent of the other party, but G.James may at its discretion subcontract part of the works to third parties who shall perform their part of the Works at a level of competence, skill and timeliness appropriate to their due execution in terms of the contract.

3. Works

- The Product shall be as detailed in any attached order and in accordance with any specified drawings, specification or referred to contract documents.
- If the goods are supplied and/or installed to a Client's design or specifications then the Client shall fully indemnify G.James against any and all losses that it may incur or become liable for as a consequence of its use of such documents.
- Costs of designing, developing and manufacturing tooling on behalf of the Client shall be incorporated in the Price. G.James will retain ownership of the tooling and all intellectual property relevant thereto.
- If any item forming part of the Product is superseded or becomes unavailable for any reason whatsoever then G.James shall select an equal and alternative Product which shall constitute a variation pursuant to clause
- If no such equal and alternative item is decided upon then the agreement shall be deemed to be frustrated and G.James shall be entitled to recover its damages suffered.

- The Client will ensure that if G.James' Works involves installation in, or incorporation with Works carried out by others, then pre-existing Works will be suitable in all respects to G.James specific requirements, without adjustment. Any adjustment shall constitute a variation pursuant to clause 10.
- G.James will perform the Works as tidily as is practicable, and will leave the site of the Works in a reasonably clean and tidy condition, but the Client will pay the costs of final cleaning, which must be carried out according to G.James' instructions. The Client will provide to G.James point(s) of collection as required by G.James for all debris, rubbish, etc. and will clear it away at its own expense.
- G.James reserves the right to manage its own industrial relations with its employees and subcontractors.

4. Care of Product and Works

- The Client agrees to take all necessary steps to ensure that the Works are kept in good condition and undamaged, and that Product is kept safe from loss or damage. The Client will bear all costs to G.James of rectifying damaged Works and/or lost or damaged Product. Both Works and Product are at the risk of the Client from the date of commencing work under the contract until the end of the defects liability period.

5. Warranty and Guarantee

- G.James warrants that the Product will conform to all the performance criteria of all Australian Standards applicable to the Product current at the time of commencing the contract.
- The Client has the full benefit of conditions, warranties and representations expressly provided by the Competition and Consumer Act.
- Pursuant to clause 15 G.James offers a 1 year defects liability period on the Works.
- G.James' obligations shall extend to those provided by the whole of these terms. Except for those obligations, G.James will not be liable to the Client for any direct, indirect, incidental or consequential damages from or in relation to the Product or its use. Any advice, information or service provided by G.James outside of these terms is given in good faith and without any liability or responsibility whatsoever. Any claim made will be limited to the cost of replacement or repair, at the discretion of G.James.
- The Client agrees to not use in any way goods supplied as part of any aircraft, boats or in the United States or Canada whatsoever.

6. Ownership

- Title in the Product, or any part of the Product shall only pass to the Client when all payments claimed by G.James have been paid in full. Until this requirement is met any Product, or part of the Product in the possession of, or under the control of the Client shall be held by the Client as trustee for G.James.
- The Client shall allow G.James upon request to enter upon its premises and recover any Product which remains the property of G.James and indemnifies G.James against any liability whatsoever resulting from the actions of G.James in recovering the Product.

7. Price

- The price shall be as quoted or, if no price has been quoted, shall be charged in accordance with G.James' price list, a copy of which has been made available to the Client and which is current at the date of delivery. Sales tax and all other taxes and any other charges excluded from the price list will be borne by the Client. The Client shall pay freight charges for delivery of the Product, unless otherwise agreed.
- Any price quoted shall not be firm or fixed but shall be subject to any fluctuation in cost which is beyond the control of G.James and which is applicable to the Product.
- This quotation excludes Goods & Services Tax ("G.S.T."). On the implementation of G.S.T. the Contract Price will be adjusted to include the gross amount of the G.S.T. applicable to the supply and take into account any applicable reduction in Sales Tax.

LS1 Terms and Conditions (con't)

8. Terms of Payment

- The Client shall pay for the Product:
 - for approved accounts, in accordance with the amount claimed by G.James within 30 days from the end of the month in which the Product was delivered; or
 - otherwise as required by G.James and agreed to by the Client prior to entering into this contract.
- Any sum claimed for payment may include an amount for any product procured, modified and/or fabricated by G.James and stored by it either on or off the project.

9. Payment of the Contract Price

- Where a price has been quoted (other than in accordance with G.James' price list) the amount to be paid by the Client shall be the quoted price adjusted to allow for the value of any variations or adjustments to the contract price made pursuant to the conditions of this contract. In every such case G.James shall provide reasonable evidence to justify any decrease or increase in the contract price.
- Where a price is in accordance with G.James' price list the amount to be paid by the Client shall be as assessed and claimed by G.James in accordance with its price list as adjusted to allow for the value of any variations or adjustments made pursuant to the conditions of the contract.
- The Client shall not vary the contract price or initiate any charge against G.James or reduce payment of any claim without the prior written agreement of G.James.
- The Client shall pay G.James the whole of the amount claimed and within the period claimed for payment. Failure to do so shall entitle G.James to either:
 - immediately suspend any further works until such time as the Client has paid the debt due to G.James, or
 - determine the agreement which shall entitle G.James to recover all damages suffered (including loss of profit) arising from such determination.
- The Client shall not vary the contract price or initiate any charge against G.James or reduce payment of any claim without the prior written agreement of G.James.

10. Variations

- No variations shall vitiate this contract. Should the scope of the works or should any of G.James direct or indirect works associated with the performance of the works described in clause 3 be varied for any reason whatsoever with the consequence of either a decrease or an increase in the costs to G.James of carrying out the works then the following shall apply:
 - in the case of a reduction in cost then G.James will provide a reasonable estimate of the variation sum and the contract price shall be reduced accordingly.
 - in the case of an increase in cost then G.James will provide a reasonable estimate of the variation sum for the approval of the Client and such approval shall not be unreasonably withheld. The Client's approval shall be given before any works associated with the variation are commenced and any extra costs incurred by G.James due to any delay in approval shall result in a further adjustment to the contract price.
 - the contract price shall be adjusted in accordance with the foregoing.

11. Access and Temporary Works

- The Client will ensure that in all cases and at no cost or expense to G.James it will provide:
 - safe access for delivery of the Product and safe working areas to allow G.James to carry out the works, including the necessary protection to G.James work area and of adjoining works and/or surfaces.
 - necessary hoisting and horizontal movement of goods.
 - scaffolding, barricades and all associated works.
 - water and electrical services and free access to a telephone if required.
 - any other item as required by statute or reasonably required by G.James to enable the execution of its works.

12. Third Party Requirements

- The Client shall fully inform G.James in writing of all of the requirements of all third parties (including Governments & relevant

statutory bodies or authorities) ("third party requirements") with respect to the Works, whether those requirements arose before or after the making of the contract. G.James shall not be liable to the Customer if the Works do not conform to those requirements, or when no written notice, or untimely notice has been given. The Client shall indemnify G.James against all claims made against it by any other person or entity due to non-conformance with "third party requirements".

- The foregoing shall not apply where G.James, in the ordinary course of its business, is aware of any such "third party requirements", and has made written declaration to this effect prior to the making of this contract.
- Any variation in the Works arising from a "third party requirement" not specifically provided for by clause 12.2, shall constitute a variation and be paid for pursuant to clause 10.

13. Commencement and Completion of the Works

- 1. The date for commencement of the works and the date or period for completion of the works shall be agreed between the Client and G.James. A construction program shall not, except when specifically agreed to, form part of the contract.
- If G.James is delayed in the execution of any part of its works and the cause of the delay was outside of its control, then G.James shall give notice to the Client of the extent of the delay and the date for completion of the works shall be adjusted accordingly.
- If the cause of the delay was under the control of the Client (or anyone employed by or acting on behalf of the Client) then G.James shall be entitled to its increased loss or expense incurred as a consequence of the delay. Any such loss or expense shall constitute a variation and be paid for pursuant to clause 10.
- If, notwithstanding any extension to the date for completion of its works, G.James fails to complete its works by the due date then liquidated damages as a genuine pre-estimate of loss and damage limited to a maximum of 5 per centum of the Contract price shall be paid by G.James to the Client.

14. Handover

- G.James will advise the Client in writing the date upon which the works have reached the stage of completion. The date of completion shall be the date upon which the works are reasonably fit for use or occupation by the Client, except for minor works and/or defects which would not affect the reasonable use or occupation of the works. The date of completion of the works shall be deemed to have been reached if the Client uses and/or occupies the works.
- The defects liability period shall commence at the date of completion of the works.

15. Defects Liability Period

- G.James will for a period of one year from the date of handover rectify at its own expense any defect in the Works solely attributable to G.James.
- The Client shall pay by separate agreement for all other repairs required to the Works.

16. Termination

- G.James may terminate any contract when:
 - the Client becomes bankrupt, has a judgment recorded against it, an application for winding up presented against it, a receiver or official manager appointed to it, or proposes any arrangements with creditors.
 - the Client fails to perform any of the obligations lying upon the Client for performance.
- G.James may, at its discretion suspend the works for a period that it shall determine to allow opportunity to the Client to make good the consequences of its failure to perform its obligations including payment to G.James of any loss or expense suffered as a consequence of the suspension. Any action taken pursuant to this sub-clause shall in no way affect the entitlement of G.James to act pursuant to clause 16.1.

17. Termination

- This contract shall be deemed to be made in Brisbane, Queensland and the parties shall submit to the jurisdiction of the Courts in Queensland at Brisbane.
- Notices under these terms may be signed by a party and sent to the other party by personal delivery, posting to the last known business address or transmission by facsimile to the notified facsimile number.
- In the event that any term or part thereof cannot be given effect for any reason then it shall be severed and the remaining terms shall remain valid.

LS1 Attachment for the purposes of a “DOMESTIC BUILDING CONTRACT”

Clause 1 - Particulars

Delete - Standard Terms & Conditions LS1, Clause 1.2
Add/Insert:

1.2 G.James agrees with the Client to carry out works including the supply of goods and/or services (“the product”) for the contract price. The Contract must be in writing and a copy given to the Client, when it is entered into or as soon as practicable (but within 5 business days) after it is entered into and before carrying out the work. These terms and conditions (“the terms”) apply to that contract.

1.5 Any reference to “Client” in this contract has the same reference and meaning as “Building Owner” in the Queensland Building and Construction Commission Act 1991.

Clause 8 - Terms of Payment

Add/Insert:

8.3 Deposit not to exceed 20 % where more than 50% of the Works relating to the Contract Price are carried out offsite - Otherwise 10% if the contract price is less than \$20,000 / or 5% if the contract price is equal to or greater than \$20,000.

8.4 No amount under the contract will be claimed (other than the deposit) unless the amount is directly related to progress work.

Clause 10 - Variations

Add/Insert:

10.2 All variations must be in writing, within the shortest practical time after an agreement between the Client and G.James and before any additional work is carried out.

10.3 10.2 does not apply for work required urgently where it is not reasonably practicable to produce a written variation before carrying out the work.

Clause 13 - Commencement and Completion of the Works (Withdrawal)

Add/Insert:

13.5 The Client may withdraw from the contract within 5 Business days of receiving from the G.James, a copy of both: the signed contract; and the contract information statement. The withdrawal must be in a written notice signed by the Client and served on G.James.

13.6 G.James is entitled to retain \$100 of any deposit plus any reasonable expenses incurred to the date of the withdrawal.

Clause 14 - Handover

Add/Insert:

14.3 If any minor works and/or defects exist upon practical completion, G.James will give the Client a signed defects document that:

1. lists the minor defects/omissions that both G.James and the Client agree exist; and
2. states when G.James is to correct the defects/omissions; and
3. lists the minor defects/omissions that the client claims to exist, but are not agreed to exist by G.James.

14.4 G.James will make all reasonable efforts to have the client sign the defects document to acknowledge its contents.

CONSUMER BUILDING GUIDE

A. DOMESTIC BUILDING CONTRACT APPLIES

- To all building contracts for construction of new homes and for alterations, extensions or renovations to existing homes where the amount of the contract is greater than \$3,300.
- To a contract for either or both of actually carrying out domestic building work or managing the carrying out of domestic building work.

DOES NOT APPLY when:

1. Contract is a “Supply Only” situation.
2. Between Contractor and Sub-Contractor.
3. Owner is the State or Local Government.

B. A reference to “Client” in this contract has the same reference and meaning as “Building Owner” in the Queensland Building and Construction Commission Act 1991.

C. COOLING OFF PERIOD - The Client may withdraw from the contract within 5 Business days of receiving from G.James, a copy of both: the signed contract; and the Consumer Building Guide. The withdrawal must be in a written notice signed by the owner and served on G.James.

D. RETAINABLE AMOUNT AFTER WITHDRAWAL - G.James is entitled to retain \$100 of any deposit plus any reasonable expenses incurred to the date of the withdrawal.

E. CONTRACT MUST BE IN WRITING when it is entered into; or as soon as practicable (but within 5 business days) after it is entered into; in any case, the contract must be in writing before carrying out the work.

F. WRITTEN COPY OF CONTRACT MUST BE GIVEN TO CLIENT as soon as practicable, (but within 5 business days) after entering into the contract.

G. WRITTEN CERTIFICATE OF COMPLETION will be issued to the owner as soon as practicable following an inspection of the work, or part of the work, containing a statement of practical completion. If applicable, a list of any minor defects/ omissions will be issued along with a rectification schedule.

H. DEPOSIT NOT TO EXCEED 20 % where more than 50% of the Works relating to the Contract Price are carried out offsite - Otherwise 10% if the contract price is less than \$20,000 / or 5% if the contract price is equal to or greater than \$20,000.

I. PROGRESS PAYMENTS - no amount under the contract will be claimed (other than the deposit) unless the amount is directly related to progress of the subject works.

J. - WARNING - PRICE CHANGE CLAUSE The contract price is subject to change under LS1 clause 7.2, for any fluctuation in cost that is beyond the control of G.James.

K. VARIATIONS TO BE IN WRITING - within the shortest practical time after an agreement between the owner and the contractor; and for a variation consisting of an addition to the subject work, the variation must be in writing before the subject work is carried out - UNLESS - the variation is for domestic building work that is required urgently and it is not reasonably practicable to produce a written variation before carrying out the work.

Effective: 17/05/2023

G.James Australia Pty Ltd

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