

TERMS AND CONDITIONS

Koter Pty Ltd trading as XFERNO (referred to as "the Supplier")

1. Acceptance & Scope

- 1.1. Any instructions received by the Supplier from the Client for the supply of Goods and/or Services, and/or the Client's signature on a Quote or Order Form, constitutes acceptance of these Terms.
- 1.2. The Supplier's scope is limited strictly to the items listed in the Quote. Any "advice" regarding BAL compliance or building code requirements is provided as a general guide only; the Client remains responsible for ensuring that their building certifier, architect, or relevant authority approves the specific configuration for their site.

2. Pricing and Variations

- 2.1. **Price Validity:** Quotes are valid for 30 days from the date of issue, due to fluctuating material costs (particularly glass and aluminium).
- 2.2. **Check Measure:** Prices are subject to a final "Check Measure" conducted by the Supplier. If the final measurements differ from those provided by the Client (e.g., from plans), the Supplier reserves the right to vary the price accordingly.
- 2.3. **Variations:** Any changes requested by the Client after manufacturing has commenced will incur additional costs, including (but not limited to) material wastage, labour, and re-manufacturing expenses.

3. Payment Terms

- 3.1. **Deposit:** A non-refundable deposit of 50% of the quoted price is required to initiate manufacturing.
- 3.2. **Progress Payments:** 45% of the quoted price is payable upon notification that the Goods are ready for delivery or installation. The remaining 5% (Final Balance) is payable prior releasing of compliance certificate.
- 3.3. **Title and Risk:** Ownership of the Goods does not pass to the Client until the Supplier has received full payment in cleared funds. The Supplier reserves the right to enter the site and repossess the Goods if payment is not made when due.

4. Installation & Site Conditions

- 4.1. **Access:** The Client must provide clear, unobstructed, and safe access to the site. If the Supplier is unable to commence or continue work due to site obstructions, delays, or unsafe conditions, "waiting time" or "re-attendance" fees will apply at the Supplier's standard rates.

- 4.2. **Site Preparation:** Unless expressly included in the Quote, the Supplier is not responsible for:

- Removal of existing window treatments (e.g., blinds or curtains);
- Structural alterations, lintel repairs, or painting/patching;
- Disposal of old windows or materials (unless "Removal & Disposal" is explicitly quoted).

- 4.3. **Waterproofing:** While the Supplier installs in accordance with relevant Australian Standards, the Client is responsible for the overall structural waterproofing and weathertightness of the building envelope, unless the Supplier is specifically contracted for flashing or sealing work.

5. **BAL-FZ Compliance & Certification** 5.1. **Testing Standards:** XFERNO products are tested to **AS 1530.8.2**. The Supplier warrants that the Goods supplied substantially match the tested prototypes.

- 5.2. **Certificates:** Compliance certificates will be issued only after the account has been paid in full.

- 5.3. **External Factors:** The Supplier is not liable if a building certifier or authority rejects an installation due to site-specific factors outside the Supplier's control (e.g., surrounding vegetation, unauthorised modifications by other trades, or site-specific BAL assessment variations).

6. Limitation of Liability

- 6.1. **Consequential Loss:** To the maximum extent permitted by law, the Supplier is not liable for any indirect, consequential, or special loss or damage, including (without limitation) loss of profits, loss of rent, business interruption, or liquidated damages claimed by the Client's primary builder or any third party.

- 6.2. **Delay:** Delivery and installation dates are estimates only. The Supplier is not liable for delays caused by third-party suppliers (e.g., glass manufacturers), shipping issues, inclement weather, or other events beyond its reasonable control ("Force Majeure").

- 6.3. **Maximum Liability:** Subject to any non-excludable rights under the Australian Consumer Law or other applicable law, the Supplier's total liability for any claim arising under or in connection with these Terms shall not exceed the total price paid by the Client under the relevant Quote.

7. Warranties

- 7.1. **Workmanship:** If installation is performed by the Supplier, a 7-year warranty applies to the installation workmanship.

- 7.2. **Materials:** Glass, aluminium, and hardware components are covered by the relevant manufacturer's warranty (typically ranging from 1 to 10 years, depending on the component). Details of manufacturer warranties are available on request.

- 7.3. **Exclusions:** Warranties do not cover:

- Glass breakage after handover;
- Damage due to building settlement or movement;
- Failure to follow maintenance instructions (e.g., cleaning to prevent salt build-up in coastal areas);
- Any other misuse, abuse, or external factors.

8. Surface Finishes and Touch-Up Paint

- **Minor Surface Touch-Ups:** Minor scratches, scuffs, or blemishes on powder-coated aluminium frames are an inherent risk during manufacturing, transport, and installation. Applying factory-matched or manufacturer-approved touch-up paint constitutes an industry-standard, acceptable repair method to restore the finish of the product.
- **Supply of Repair Paint:** Where applicable, touch-up paint is supplied to the Buyer to rectify minor superficial scratches that occur during or after installation. The provision or application of touch-up paint satisfies the Seller's obligations regarding minor surface blemishes.
- **Standard of Visual Inspection:** Surface finishes shall be evaluated from a minimum distance of 1.5 to 2 meters under normal daylight conditions without magnification. Blemishes or touch-up paint repairs not visible under these standard viewing conditions shall not be deemed a defect or non-conformance.

9. Glass Characteristics & Tolerances

- **Fire-Rated, Toughened, and Laminated Glass:** Fire-rated glass, toughened glass, and laminated assemblies may exhibit minor visual distortions, optical anomalies, or slight bow/curvature. These characteristics are an inherent result of the high-temperature heat-treatment, toughening, and lamination processes. Such variations are normal manufacturing traits and do not constitute a defect or failure to comply with specifications.

10. Site Handling, Storage & Post-Installation Liability

- **Risk Transfer & Pre-Delivery Damage:** Risk of loss or damage passes to the Buyer upon site delivery. The Buyer must inspect and report any pre-delivery damage within 5 days of arrival. Claims must be supported by clear video footage recorded during unpacking and inspection; failure to provide video proof will void any damage claims.
- **Storage & Protection:** The Buyer is solely responsible for ensuring delivered goods are properly stored, protected from trade damage (including dust, chemical splatter, plaster, or masonry runoff), and handled with care prior to and after installation.
- **Post-Installation Scratches:** The Seller assumes no liability for scratches, scuffs, dents, or surface degradation occurring after delivery or post-installation completion, including damage caused by subsequent trades, improper cleaning, or inadequate protection on site. Protective plastic wrappings or tapes must be removed by the Client within 8 to 12 weeks of installation. The Supplier accepts no liability for surface damage or adhesive residue resulting from film left on the product beyond this period.

11. Payment Retention & Dispute Limits

- **Limitation on Withholding Payment:** Minor cosmetic scratches, touch-up paint applications, natural optical glass distortions, or post-delivery damage shall not constitute grounds for withholding any portion of the final balance due.
- **Proportional Retention Cap:** In the event of a valid, disputed defect, the Buyer may only withhold a reasonable sum directly equivalent to the actual repair cost of the specific affected item. The balance for all unaffected products and services must be paid strictly in accordance with the contract terms.
- **Overdue Interest:** Any invoice balance remaining unpaid after the due date shall accrue interest at the rate of 12% per annum (1% per month), calculated daily from the due date until full payment is received.
- **Recovery Costs:** The Buyer agrees to reimburse the Seller for all legal fees, debt collection agency charges, and court fees incurred in recovering overdue balances or wrongfully retained payments.

12. Dispute Resolution

12.1 Any dispute arising under these Terms must first be notified in writing, followed by a formal meeting between the parties to attempt resolution.

12.2 If the dispute remains unresolved, the parties agree to mediate in good faith before commencing litigation.

These Terms are governed by the laws of New South Wales.