

Conditions of Quotation and Supply March 2020

Basis of Quotation

1. Unless specified on the quotation form, these terms and conditions (**Terms**) are an offer to supply, not an offer to Sub-Contract.
2. This quotation remains valid for thirty (30) days from the date on the quotation form. Any extension of validity is at the discretion of Buckeridge Nominees Pty Ltd (ACN 008 849 581) as trustee for the PAW Unit Trust (ABN 55 519 847 105) trading as Affinity Windows (**Affinity**).
3. The price quoted is based on current costs, but will remain firm if accepted within thirty (30) days for goods and services to be supplied within 90 days of acceptance of the quotation. Affinity reserves the right to apply a surcharge to any goods and services supplied after that date (unless caused by Affinity's fault) reflecting the difference in selling rates between the quotation date and the date of supply.
4. If you require delivery less than 10 days after accepting the quotation you must pay the reasonable costs of Affinity accelerating production of your order, in addition to the price quoted.
5. The quotation sets out the specific products being quoted. Any change to any detail of the products may result in a price change.
6. Under the National Construction Code (NCC) performance requirements are satisfied if windows are designed and constructed in accordance with specified Australian Standards:
 - (a) AS 2047– Windows in Buildings – Selection and Installation (as amended or replaced from time to time).
 - (b) AS 1288 – Glass in Buildings – Selection and Installation (as amended or replaced from time to time).

It is essential that Affinity be provided with:

- (a) for a building in an exposed site which is likely to be subjected to driving rain – designs which specify the exposed level of water penetration resistance as defined in Table 2 of AS 2047; and
- (b) for housing – the correct Window Rating (N or C) prior to quoting and manufacture. The applicant for the building approval, building designer, builder or approving Authority shall nominate the appropriate window rating. You warrant to Affinity that any such rating provided is correct.

You acknowledge that corner windows and doors (being windows and doors having 25% or more of any panel or pane within 1200mm of an external corner of the building) must comply with the serviceability and ultimate limit state pressures specified in Table 1 of AS 2047, the cost of which will be factored into your quote if we are informed that they are required.

7. If you or your builder have provided us with information about the relevant conditions and other information relating to the design of the building or the installation

of the product (**Specifications**), we have relied upon those Specifications in making any recommendation. If any information provided was incorrect or incomplete, Affinity is not liable for any failure of the product to perform arising from incorrect selection of product.

8. If you have any doubts as to the accuracy or completeness of the Specifications provided to Affinity, you must ensure that Affinity is provided with full, correct information (and the opportunity to revise any recommendations) prior to accepting this quotation.

Terms of Payment

9. Cash with order, except for trade customers that have entered into a credit arrangement which applies to supplies by Affinity prior to order, in which case the terms of that credit arrangement will apply.

Design and Quality

10. The products quoted will be manufactured to Affinity's standard designs and to at least an industry standard of workmanship.

Sizes

11. Fabricators have ranges of standard sizes (that may differ between fabricators) which are normally manufactured in bulk. In order to keep this quotation competitive, Affinity has (unless stated otherwise) quoted the nearest standard size, as per our brochure, to within one brick course of your stated requirements.

Ordering

12. Acceptance of this quotation and these conditions must be in writing, and may be made by returning the tear-off slip from the quotation form, or by an order form referring to the quotation number. The quotation has been made on the basis of these conditions, and if you seek to alter these Terms by including different terms in any acceptance, Affinity may refuse your order. Your terms and conditions, howsoever provided, do not form part of these Terms (even if any representative of Affinity signs those terms and conditions and/or they are annexed to these Terms, or any quote or purchase order). Any variation or changes to these Terms (other than an update to these Terms or conditions by Affinity), whether to apply to all subsequent orders, or any particular order, may only be made if it:

- (a) is in writing;
- (b) is signed by authorised managers of both parties; and
- (c) expressly states that it is a variation to these Terms, and;

the parties agree and acknowledge that their representatives and employees that are not authorised managers as referred to in this clause 12 above do not

have the authority to vary these Terms, or to agree that these Terms do not apply to a supply to which

Non-Standard Products

13. If the products to be ordered are not exactly as shown in Affinity's current brochures, detailing standard products, manufacture will not be commenced until a written order is received.
14. All non-standard products will be invoiced in full immediately following despatch of the first delivery of frames.

Protection

15. Affinity has included standard plastic taping to window frames to protect against loose debris such as wet plaster, mortar and paint. Sill protectors enable wheelbarrow access via a door frame with the protector remaining the property of Affinity. Any extra requirements will involve an additional charge.

Packing

16. If not specified in the quotation, packaging and/or crating will involve an additional charge. If you require packaging and/or crating, please contact us for our costs.

Delivery

17. Delivery is included in the quoted price within a 60km radius of the Perth GPO. Where delivery is to be made by Affinity's own trucks outside of that area, our standard charges based on distance and time will apply. We will provide details of Affinity's current standard charges on request.
18. For country despatches, products can be collected at our premises specified on the Quotation Form by you or your road carrier, or will be delivered without additional cost to any designated freight depot in Perth. Any freight costs are to be paid directly by you.

Damage or Short Delivery

19. You must inspect the products on delivery, and notify us within seven (7) days of any damage or short delivery. If you do not notify us within that time, the products will be presumed to have been delivered in accordance with the order and in good condition without any apparent defects, and you will bear the onus of proving that they were not.
20. Risk in the products passes to you on the earlier of delivery to site, collection of the products from our premises specified on the Quotation Form by you or your road carrier, or delivery to any designated freight depot in Perth, whether or not they have been paid for in full. If the site is unattended at the time of delivery, Affinity may leave the goods on site, and shall not be responsible for any loss, damage or theft after delivery. Where the product is collected from Affinity, you agree to comply with all relevant laws, including without limitation, all safety laws applicable to the supply of the product and Chain of Responsibility obligations with respect to the collection and transport of the products.
21. In clause 20, "**Chain of Responsibility**" means the

these Terms would otherwise apply

road transport laws contained in the *Road Traffic (Administration) Act 2008 (WA)* and the *Road Traffic (Vehicles) Act 2012 (WA)* and associated regulations, as amended from time to time, or any equivalent laws in other States.

Variations to Orders

22. You must pay the reasonable costs of all variations to orders in addition to the price quoted. The reasonable costs of a variation will be calculated by Affinity at reasonable rates for labour and materials and will include a reasonable administration charge, allowance for overheads and profit and other costs incurred by Affinity as a result of the variation.

Cancellation, Exchange and Re-delivery

23. You acknowledge that the product is manufactured to order, and consequently, there is no refund or credit for cancellation, return or exchange of any product (other than in respect of warranty claims).

Rectification by Others

24. If any Affinity product requires replacement, repair or rectification under any express or statutory warranty, Affinity may elect to undertake such replacement, repair or rectification. Affinity will not be liable for the costs of any replacement, repair or rectification undertaken by any other person, except where Affinity has agreed in writing to such work, or where your statutory warranties require Affinity to pay those costs.

Scaffolding

25. This quotation does not include any provision for the supply or erection of scaffolding. If scaffolding is required for site glazing or other purposes, it will be supplied by you without cost to Affinity. Scaffolding must conform to all Australian Standards and comply to any State and/or Federal Occupation Health and Safety Regulations.

Installation

26. Where Affinity is required to install its products on site:
 - (a) Affinity will do so:
 - (i) in accordance with the Specifications and industry standards;
 - (ii) subject to clauses 28 to 32, with regard to the overall construction programme; and
 - (iii) in a proper and workman-like manner;
 - (b) you will be responsible for ensuring safe and adequate access to the site for delivery and installation, and all other aspects of site safety; and
 - (c) you must ensure that the following is completed prior to the installation date unless otherwise agreed with Affinity in writing:
 - (i) all brickwork and floor and wall frames must be safely constructed; and
 - (ii) all scaffolding required by Affinity

must be safely installed.

Installation, Care and Maintenance

27. You agree to comply with Affinity's recommended procedures for installation, care and maintenance of the product. "Affinity's Product Information Guide" is available at www.affinitywindows.com.au or alternatively a hard copy will be posted to you on request.

Force Majeure

28. A party (**Affected Party**) is not liable for any delay or failure to perform an obligation (other than to pay money) under these Terms caused by an act of God, fire, war, insurrection or other armed conflict, riot, vandalism or sabotage, strike, lockout, ban, transport or port accident or congestion, pandemic, epidemic, quarantine of persons or goods, limitation of work or other industrial disturbance or any law, rule, regulation, order, requirement or restraint imposed by any government or governmental agency whether local, state, national or international (other than an order, requirement or restraint resulting from the Affected Party's breach of any law, permit or authorisation).
29. The Affected Party must notify each other party as soon as practical of any anticipated delay or failure caused by an event specified in clause 28 (**Event**).
30. The performance of the Affected Party's obligation is suspended for the period of delay caused by the Event to the extent performance is prevented by the Event from the date notice is given under clause 29 and any such non-performance or delay in performance of this agreement will not be a breach of this agreement.
31. Any party may terminate this agreement at the expiration of not less than 7 days' notice to the other party if prevention of performance of a material obligation by an Event, or a delay caused by the Event, exceeds 90 days.
32. If a party terminates this agreement under clause 31, all money previously paid under this agreement for which no goods, services or other consideration has been provided must be refunded.

Warranty/Guarantee

33. Nothing in this quotation operates to exclude or restrict any right you have under any statute, including under the Australian Consumer Law, except to the extent permitted by that statute. Affinity will comply with its obligations in respect of any such warranty, and any express warranty or guarantee given by Affinity is in addition to those statutory warranties.
34. Where any materials and processes are specified by you and not manufactured by Affinity, those materials and processes will be supplied subject to the manufacturer's warranty. Subject to any statutory warranty, Affinity shall not be liable for any defects in those materials or processes.
35. In the event any product supplied by Affinity under these Terms is defective, the liability of Affinity (if

any) shall be limited to:

- (a) the Express Manufacturer's Warranty; and
- (b) your rights under the Australian Consumer Law.

36. The provisions of clause 35 above are subject to the provisions of any statutory condition or guarantee which cannot legally be excluded.

AS 1288

37. AS 1288 currently provides:

If the presence of glass in a door, side panel or a panel capable of being mistaken for a doorway or opening is not made apparent by transoms, colonial bars, other components of the glazing system or other decorative treatment, such as being opaque or patterned, the glass shall be marked to make it visible.

Marking shall be in the form of an opaque band not less than 20mm in height and located so that the vertical distance from the floor level is:

- (a) *not less than 700mm from the upper edge of the band; and*
- (b) *not more than 1200 mm to the lower edge of the band.*

A broken line or patterns using company logos may be an acceptable form of marking provided it meets the other criteria set out in this clause. The dimensions and design of the opaque band that Affinity uses can be found in Affinity's Doors and Windows brochure, Affinity's Product Information Guide, and on its website.

Any product covered by AS 1288 will have a standard Affinity opaque band affixed to or engraved on the glass. That opaque band **MUST NOT** be removed or altered, and you indemnify Affinity against any liability arising from any removal or alteration of the opaque band.

Consequential Loss

38. Where you acquire products from us for the purpose of on-supplying to another person ("**consumer**"), we shall not be liable for any consequential loss suffered by you unless otherwise stated in a contract or agreement. However, to the extent required by the Australian Consumer Law, we may be liable for any consequential loss suffered by the consumer.
39. In these Terms, "**consequential loss**" means loss beyond the normal measure of direct damages and includes without limitation and whether or not such loss would be within the normal measure of direct damages, indirect loss, loss of profit, loss of revenue, loss of business, loss of actual or anticipated savings, loss of bargain, loss of business reputation, loss of use, cost of capital or costs of substitute goods, facilities or services and loss of opportunity (including opportunities to enter into arrangements with third parties).

GST

40. Any expression used in clause 41 and which is defined in the *A New Tax System (Goods and Services Tax) Act 1999* has the same meaning in clause 41.

41. Unless otherwise expressly stated, all amounts stated to be payable by you under these Terms are exclusive of GST. If GST is imposed on any supply made under or in accordance with these Terms, the recipient of the taxable supply must pay to the supplier an additional amount equal to the GST payable on or for the taxable supply. Payment of the additional amount will be made at the same time as payment for the taxable supply is required to be made in accordance with this document, subject to the provision of a tax invoice by the supplier to the recipient.

Privacy

42. Affinity collects your personal information for the purpose of providing products and keeping a record of transactions on our file. Personal information can include sensitive health information as required by Affinity from time to time. Our Privacy Policy can be found at www.affinitywindows.com.au

Surveillance

43. You agree that Affinity may use a tracking device or other surveillance device at Affinity's premises or manufacturing sites and in its vehicles.

Termination

44. A party ("**Non-defaulting Party**") may terminate these Terms at any time by written notice to the other party ("**Defaulting Party**") if any of the following apply:
- (a) the Defaulting Party fails to carry out any provision of these Terms, the failure is capable of remedy and the Defaulting Party does not remedy that failure within 7 days after written notice to the Defaulting Party requiring it to be remedied; or
 - (b) a judgment, order or encumbrance is enforced, or becomes enforceable upon any of the Defaulting Party's property;
 - (c) an order for payment is made or judgment for an amount exceeding \$10,000 is entered or signed against the Defaulting Party which is not satisfied within 7 days;
 - (d) the Defaulting Party suspends or delays payment of its debts;
 - (e) the Defaulting Party is unable to pay its debts as and when they fall due or goes into bankruptcy;
 - (f) the Defaulting Party (being a corporation) has a liquidator appointed to it, or has a mortgagee of the corporation assume control of, or a receiver appointed to any of the assets or undertakings of the Defaulting Party (not being an Insolvency Event);
 - (g) the Defaulting Party (being a corporation) is deregistered;
 - (h) the Defaulting Party breaches a credit arrangement; or
 - (i) to the extent permitted by law, the Defaulting Party is subject to an Insolvency Event.
45. These Terms may be terminated by Affinity at any

time effective immediately upon the giving of notice if a change occurs in your circumstances which, in Affinity's reasonable opinion, may have a material adverse effect on your ability to comply with its obligations under these Terms. Examples include (but are not limited to):

- (a) a change in your financial position up and until an Insolvency Event occurring;
 - (b) you factor your debts; or
 - (c) you become a party to litigation, arbitration or any other administrative proceeding.
46. If you are the Defaulting Party under these Terms (or where any of the events in clause 45 occurs) Affinity may, at its option, exercise any or all of the following rights in addition to any other rights it may have under these Terms or at law:
- (a) suspend performance of its obligations to you whether under these Terms or otherwise; and/or
 - (b) withdraw any credit facilities which may have been extended to you and require immediate payment of all moneys owed to Affinity by you.
47. The Defaulting Party (or in the case of an event under clause 45, you) will be responsible for, and will indemnify the Non-Defaulting Party (or Affinity, as applicable) against, any damages, costs (including, without limitation, legal fees on a solicitor-client basis), losses and expenses, incurred by the Non-Defaulting Party (or Affinity, as applicable) as a result of the breach or event.
48. On termination of these Terms, each party retains its rights against the other party in respect of any past breach, in addition to any other rights, powers or remedies provided by law.
49. In these Terms, "**Insolvency Event**" means the happening of any of these events in relation to the Defaulting Party:
- (a) the Defaulting Party enters into a compromise or arrangement (or announces one) under section 411 of the *Corporations Act 2001* (Cth);
 - (b) a managing controller is appointed over the whole (or substantially the whole) of the Defaulting Party's property; or
 - (c) the Defaulting Party enters into voluntary administration.

General

50. These Terms are governed by and are to be construed according to the laws of Western Australia and the parties submit to the exclusive jurisdiction of the courts of Western Australia.
51. If any part of these Terms is, or becomes, void or unenforceable, that part is, or will be, severed from these Terms so that all parts that are not, or do not become, void or unenforceable remain in full force and effect and are unaffected by that severance.
52. A failure to exercise or delay in exercising any right, power or privilege by any party will not operate as a waiver of that right, power or privilege. A single or partial exercise of any right, power or privilege will not preclude any other or further exercise of that right, power or privilege, or

the exercise of any right, power or privilege. A purported modification, variation or amendment of these Terms or any waiver of any rights of any party shall not have any force or effect unless and until the same is in writing, executed by the parties or, in the case of a waiver, is executed by the party whose rights are thereby waived.

53. These Terms constitute the entire agreement between the parties with respect to the subject matter of these Terms and contains all of the representations, warranties, covenants and agreements of the parties in relation to the subject matter of these Terms as at the date of these Terms. Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by these Terms and has no further effect.