

## RODGERS ALUMINIUM ENTERPRISES (PTY) LTD (HEREINAFTER “THE CONTRACTOR”)

### I. SALE AGREEMENT

1.1 These terms and conditions shall apply to all orders and contracts made or to be made by the Contractor and the respective Client for any and all sale and supply of certain goods and items. Nothing in these terms and conditions affects the Client’s statutory rights (including the right to insist that the goods that the Client buys from businesses must correspond with their description, be fit for their purpose and be of satisfactory quality). These terms and conditions shall prevail over any separate terms put forward by the Client. Any conditions that the Client submits, proposes or stipulates in whatever form and at whatever time, whether in writing, by email or orally, are expressly waived and excluded. No other terms or changes to the terms and conditions shall be binding unless agreed in writing and signed by the Contractor and the Client.

1.2 The parties hereby agree that this is an annexure, containing material terms and conditions of an agreement for the sale of certain goods and items, as specified in the signed quotation/document/order.

1.3 The Client furthermore agrees and acknowledges that he has read and understand the contents hereof and considers himself irrevocably bound hereto.

### 2. PAYMENT TERMS AND CONDITIONS

2.1 The Client understands that the Contractor’s payment terms are the following:

2.1.1 Fifty percent (50%) of the purchase price is payable by the Client to the Contractor on confirmation of acceptance of the order by the Contractor;

2.1.2 Forty percent (40%) of the purchase price is payable by the Client on the completion of manufacture or commencement of the installation (whichever comes first) of the goods and items contained in the Order;

2.1.3 Any balance due is payable once installation of all goods and items purchased from the Contractor is finalized and before the Contractor leaves the site of installation.

2.2 The Client acknowledges that once the purchase of the goods and items contained in the signed quote/order/document to which this annexure is annexed are provided as per the terms of the quotation, payment will irrevocably be due. Should it be required, the Client’s act of signing off on the job is a written acknowledgement that there are no defects in the goods/items purchased from the Contractor and that there will be no delays in payment by the Client. The Client will under no circumstances be entitled to retain any amounts for any reason whatsoever and will also not be entitled to reductions in the purchase price, or set-off. Full payment of the contracted amount serves as acknowledgement that there are no defects in the goods/items purchased, and that installation was completed satisfactorily.

2.3 In the event of installation taking longer than 7 days due to delays attributable to the Client, the Contractor will be entitled, at his sole discretion, to enforce bi-weekly progress payments with

reference to the completed percentage of installation, as performed by the Contractor, alternatively 40% of the contract price.

2.4 This contract is only valid for 30 days. Should payment not have been made, alternatively installation not be completed, the Contractor reserves the right to increase the contract value should the purchase price contained in the agreement between the parties, become subject to supplier increases, which affect the profit margins of the Contractor.

2.5 In the event of a discount to the contract price being granted or negotiated, the Client shall forfeit his entitlement to such discount in the event of his failure to abide by the Contractor’s payment terms.

2.6 The Contractor shall not be liable for any retention, penalties attributable to delays, unless specifically agreed upon between the parties, prior to installation of the goods/items purchased herein.

2.7 The ownership of all products installed by the Contractor shall vest in the Contractor as the Contractor’s property until such time as all amounts due to the Contractor have been paid in full, regardless of whether the products form part of any building or not and the Client herewith waives any right he may have to claim rights of ownership to the goods, arising from accessio (i.e. by affixing any goods or materials to the property of the Client) or any other legally accepted common law or other doctrine.

2.8 All unpaid amounts due by the Client to the Contractor may at the Contractor’s sole discretion be subject to interest at 2% of the agreed purchase price of the goods, calculated and compounded monthly from the first day of the month following the month during which the Client became liable for the purchase price in terms of the agreement.

2.9 In the event of legal proceedings arising between the parties from the terms and conditions of this agreement, or pertaining to any other breach of the Client, the Client will be liable for the Contractor’s legal costs on a scale as between attorney and own Client, including collection commission and tracing agent’s fees.

2.10 The parties agree to the jurisdiction of the Magistrate’s Court in relation to any legal proceedings, which may result from this agreement, provided that the Contractor is entitled in its discretion to institute any such legal proceedings in any other competent court.

2.11 The Debtor/Client hereby expressly renounces the benefits of the non causa debiti (i.e. the purpose of renouncing this exception is to place the onus of proving the absence of the cause of the debt on the Client), the errore calculi (this is the defense that the amount claimed has been incorrectly calculated) and the revision of accounts.

### 3. ORDER AND INSTALLATION

3.1 The Client will indicate acceptance of any quotation rendered by the Contractor, prior to an agreement arising between the parties, by affixing his signature thereto. Such signature will indicate the commencement of an agreement between the parties in terms hereof.



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3.2 Once the Client has affixed his signature to the quotation, the Client agrees to provide the necessary assistance for the Contractor to, at its sole discretion, obtain a credit report from a recognized credit reporting agency containing personal and/or other information for the Contractor's business purposes, including the assessment of an order or the collection of overdue amounts. The Client consents to the Contractor obtaining any such credit report from any recognized credit reporting agency.

3.3 The Contractor will not be obliged to order the product prior to assessment, receipt of the signed contract, final measurements, these terms as well as the amounts due as stipulated above.

3.4 Once the order has been placed by the Client, by providing the Contractor with the signed documentation as stipulated above, access to final measurements and final design criteria, the Contractor will order any materials which may be required in relation to the product. All materials and glass are customized to the Client's order and any variation which the Client may require will result in additional costs, for which the Client irrevocably accepts liability, on the same terms and conditions as stipulated above.

3.5 Installation will commence within the lead time as stated on the signed quotation, following delivery to the Contractor of the Client's acceptance of the quotation and/or alternatively the date on which final measurements are taken for the installations and pursuant to the agreement between the parties, whichever occurs later. This time period is subject to the availability of goods/services/items required in terms of the agreement between the parties, from the suppliers of the Contractor and also subject to the availability and suitability of the installation site and the suitability of the applicable weather conditions. The Contractor shall aim to let the Client know if the Contractor so expects that it will be unable to meet the estimated delivery date, but, to the extent permitted by law, the Contractor shall not be liable to the Client for any losses, liabilities, costs, damages, charges or expenses arising from such late delivery.

3.6 The Client acknowledges and agrees that:

3.6.1 Coated aluminium products may be subject to colour variation and in this regard a variation of 5% will be regarded as acceptable by the Client.

3.6.2 Installation may result in slight scratches to glass and aluminium. Should such scratches not be clearly visible from a physical inspection, standing 3 meters away from the installed goods/items, such scratches will be regarded as acceptable for purposes hereof.

3.6.3 Unless specifically provided for in the written quotation accepted by the Client, any installation does not include painting, plastering work nor waterproofing.

3.6.4 Unless specifically provided for in the written quotation accepted by the Client, any installation does not include the costs of rational designs, or certificates of approval issued by a Structural Engineer in the event that these may be required.

3.6.5 Any delays in the Contractor's performance in terms of this agreement, or damages which may arise for the Client and which are directly or indirectly attributable to electrical power failures, will not be the cause for any legal action by the Client against the Contractor and the Client holds the Contractor harmless in respect thereof, to the extent permitted by law.

3.6.6 It is desirable that the product be installed last on any building or renovation site. In the event that the Client requests prior installation of the product, the Contractor shall not be accountable or liable for any damages caused by other Contractors, to the extent permitted by law.

3.6.7 All installation queries must be addressed to the Project Coordinator in charge of the installation.

3.7 Provided that the Contractor is contractually obliged to replace existing treads and finishes, the Contractor will match such existing treads and finishes with regard to the replacement of tiles in respect of type and colour. The Contractor will endeavour to obtain matching or similar tiles or finishes but will not be held liable for any deviations pertaining thereto and no guarantees are given to the Client in this regard.

3.8 All risk pertaining to the product, materials and/or goods shall pass to the Client upon delivery and/or installation, except that, where delivery is delayed due to a breach of the Client's obligations under the contract, such risk shall pass at the date when delivery and/or installation would have occurred but for the Client's breach. From the time when the risk passes to the Client, the Contractor will not be liable for loss or destruction of the product, goods and/or materials.

3.9 If delivery and/or installation is delayed through the Client's unreasonable refusal to accept such delivery and/or installation, or if the Client does not (within 1 week of the Contractor's first attempt to deliver and/or install the products, goods and/or materials) accept delivery and/or installation of the product from the Contractor, then the Contractor may (without affecting any other right or remedy available) do either of the following:

3.9.1 Charge the Client a reasonable storage fee and other reasonable costs incurred by the Contractor; or

3.9.2 No longer make the product, goods and/or materials available for delivery and/or installation and notify the Client that the Contractor is immediately cancelling the applicable contract, in which case the Contractor will refund to the Client any money already paid under the applicable contract, less the Contractor's reasonable administration charges and any storage fees and sundries as may be applicable.

### 4. THE CONTRACTOR'S SUNDRY OBLIGATIONS

4.1 The Contractor will be responsible to clean the relevant installation site following completion of installation.

4.2 The product is guaranteed against any structural defects or defective workmanship for a period of one year following the date of installation. The Contractor will be absolved from honoring the guarantee in terms hereof until such time that all amounts due to the Contractor, by the Client and arising from this agreement have been paid in full.

### 5. THE CLIENT'S OBLIGATIONS

5.1 The Client will provide the Contractor with unencumbered access to the premises where the installation is to be effected, during the period of installation.

5.2 The Client will remove any furniture and/or valuables from the premises in the vicinity of the installation prior to commencement thereof, failing which the Contractor reserves the right to remove or move such furniture and/or movables. The Contractor will under no circumstances be held liable for any damages caused to such furniture or valuables, whether negligent or otherwise and arising from whatsoever cause in terms of this agreement, to the extent permitted by law.

5.3 It will be the Client's sole responsibility to ensure proper preparation of the premises in relation to the construction of possible openings, with special reference to existing or proposed reveals, sills and apertures being level and square, and related



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support structures and the Contractor will accept no responsibility for defects in its product or the operation thereof attributed to defects or damages related to the preparation of the premises. Should the Client be uncertain as to how the premises is to be prepared, the Client acknowledges that the obligation is on the Client to ascertain what is required for such preparation and then comply with such requests from the Contractor.

5.4 It will be the Client's sole responsibility to inform the Contractor of expected sag of overhead/underfoot structures prior to final measurements. The cost of the readjustment of the frame, following installation, attributable to the sagging of the overhead/underfoot support structure, will constitute an additional expense for the Client's account.

5.5 It will be the Client's sole responsibility to point out any hidden cables, electrical wiring, pipes which are not patently visible, inclusive of the strength of any top beams and foundations and the Contractor shall not be liable for any damages or ineffective operation or defects of the product, arising from the Client's failure in this regard.

5.6 Should the supporting structures provided by the Client and pertaining to the installation of the product/goods/items purchased in terms hereof not be adequate or ready for installation within the time frames agreed upon, then the Client agrees that 90% of the outstanding account due to the Contractor, will be paid, upon demand, notwithstanding the terms and conditions stipulated above and pertaining to payments in terms hereof. Should such supporting structure/s fail for whatever reason prior to or during installation, the entire amount due to the Contractor will be fully paid by the Client immediately.

5.7 The Client will be responsible to ensure adequate damp proof coursing or water proofing to the extent that these are relevant to the installation of the product. The Contractor accepts no liability in this regard and neither will the Contractor be held liable for damages or defects which may arise directly or indirectly as a result thereof, to the extent permitted by law.

### 6. SURETY

6.1 In the event of the Client being a legal entity, the signatory representing such Client in entering into this agreement, by affixing his signature hereto, hereby binds himself as surety and co-principal debtor jointly and severally for the whole and total for the due, proper and punctual performance by the Client of all his obligations arising from this agreement (hereinafter referred to as "the Surety").

6.2 The Surety waives and renounces any right to claim an abatement of the account from the Contractor before making payment in terms hereof.

6.3 The surety by signing this document, in addition to any benefits he may be entitled to in law and without detracting from the generality of the foregoing, hereby waives the following exceptions and the benefits arising therefrom while at the same time acknowledges that he fully knows and understands the meaning and full force and effect of such benefits: the benefits of excussion, division, cession of action and the exception of *de duobus vel pluribus reis debendi* (a waiver of this benefit by a co-debtor and/ or surety entitles the Contractor to recover the full debt from such co-debtor's surety, without first requiring payment from the other debtor or the principle debtor).

### 7. INDEMNITY

7.1 The Contractor shall not be liable for any damages of whatsoever nature, whether special or general, arising from any cause whatsoever in relation to the installation of the product, or the failure thereof following installation, and the Client herewith indemnifies and holds the Contractor harmless against any claims for any damages directly or indirectly arising from the execution of the Contractor's obligations, or their product, regardless of the cause thereof, to the extent permitted by law.

7.2 The Contractor shall not be liable to the Client for any breach, hindrance or delay in the performance of a contract attributable to any cause beyond the Contractor's reasonable control (*force majeure*), including without limitation any natural disaster and unavoidable incident, absence of third parties (including without limitation suppliers, governments, quasi-governmental supra-national or local authority), insurrection, riot, civil commotion, war, hostilities, war like operations, national emergencies, terrorism, piracy, arrests, restraints or detentions of any competent authority, strikes or combinations or lock-out of workmen, epidemic, fire, explosion, storm, flood, drought, weather conditions, earthquake, natural disaster, accident, mechanical breakdown, failure or problems with public utility supplies (including electrical, telecoms or internet failures), shortage or inability to obtain supplies, materials, equipment or transportation, regardless of whether the circumstances in question could have been foreseen.

7.3 If the Contractor has contracted to provide identical or similar products, goods and/or materials to more than one Client and are prevented from fully meeting its obligations to the Client by reason of an event of *force majeure*, the Contractor may decide at his absolute and sole discretion which contracts he will perform and to what extent.

### 8. GENERAL

8.1 In accepting a quotation by affixing his signature thereon, the Client acknowledges that he has familiarized himself with the Contractor's Standard Terms and Conditions as contained herein and that these terms and conditions would govern the contract between the parties.

8.2 No alteration, cancellation, variation of, or addition hereto shall be of any force or effect unless reduced to writing and signed by all parties to this agreement or their duly authorized representatives.

8.3 The Client agrees that the Contractor may provide information to a credit reporting agency in relation to any order not operated in accordance with this agreement and that costs associated with any such action may be added to the Client's account.

8.4 This document contains the entire agreement between the parties and neither party shall be bound by any undertakings, representations, warranties, promises or the like not recorded herein.

8.5 No indulgence, leniency or extension of time, which either party may grant or show to any other party, shall in any way prejudice such party to preclude it from exercising any of its rights in the future. No failure or delay by the Contractor or the Client in exercising any right under these terms and conditions or a contract shall operate as a waiver of such right or extended to



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or affect any other subsequent event or impair any rights or remedies in respect of it or in any way modify or diminish other parties' rights under these terms and conditions or contract.

8.6 The Client designates the installation address as his domicilium citandi et executandi ("domicilium") for any notice/s, the serving of any process and for any other purposes arising from this agreement.

8.7 The Contractor shall be entitled in his sole discretion to photograph the final product and to use such photos for promotional purposes without the prior consent of the Client.

8.8 Any defect/s and/or dissatisfaction in relation to the product following installation must be reported to RGA Window & Door Systems in writing and sent per registered mail to RGA Building, Theron Street, Plett Industria, Plettenberg Bay within seven (7) days of the Contractor leaving the site of installation.

8.9 In order for the Contractor to provide the Client with any remedies for an alleged faulty product, the Contractor may need the Client's assistance and prompt provision of certain information regarding the product, including:

8.9.1 The Client specifying with reasonable detail in which it is alleged that the product is damaged or defective; and

8.9.2 The Client providing the Contractor with a delivery note number and such other information as the Contractor may reasonably require.

8.10 If the Client would like the Contractor to repair, replace or provide a refund for the product where it did conform to the applicable contract, and the Contractor finds that the product has:

8.10.1 been misused, abused or subjected to neglect, improper or inadequate care, carelessness, damage or abnormal conditions; or

8.10.2 been involved in any accident or damage caused by an incorrect attempt at modification or repair; or

8.10.3 been dealt with or used contrary to the manufacturer's instructions for the product; or

8.10.4 deteriorated through normal wear and tear, after delivery and/or installation by the Contractor, the Contractor may at its sole discretion decide not to repair, replace or refund the Client for the product, goods and/or materials, and/or the Contractor may require the Client to pay all reasonable carriage costs and servicing costs at the Contractor's current standard fees and costs, and to the extent permitted by law, the Contractor shall not be liable to the Client for any losses, liabilities, costs, damages, charges or expenses as a result.

8.11 The Client confirms that his failure to report any defect/s and/or dissatisfaction as aforementioned shall result in the Contractor being deemed to have performed its obligations in a proper and workmanlike manner and to the satisfaction of the Client.

8.12 If any clause in these terms and conditions or contracts shall become or shall be declared by any court of competent jurisdiction to be invalid or unenforceable, such invalidity or

unenforceability shall in no way affect any other clause or part of any clause, all of which shall remain in full force and effect, so long as these terms and conditions or contract shall be capable of continuing in effect without the unenforceable term.

### 9. MAINTENANCE OF PRODUCTS

9.1 Maintenance is the sole responsibility of the owner and must begin immediately following delivery / handover / signoff / full and final payment of the product.

9.2 All products are warranted, however this will be for varying periods of time depending on the item. Should the owner deem it necessary these warranty documents can be provided on completion of installation and on full and final payment. Warranties are subject to regular maintenance, normal usage and normal weather or operating conditions.

9.3 The product, goods and/or materials, is intended to be used strictly in accordance with the manufacturer's latest published instructions. It is the Client's responsibility to ensure that the product is strictly used in accordance with those instructions. Maintenance documents detailing the correct method and period thereof are available from our offices or as a download off our website. The Client acknowledges that he has familiarised himself with the said maintenance documents and accepts the implications thereof.

9.4 To ensure that the correct maintenance routine is being followed and to maximize warranties it is recommended that RGA is called in from time to time as stipulated within the relevant maintenance document and at a maximum period of 1 year.

### 10. WARRANTY

Request or refer to warranty documents supplied per product. Note, warranty periods vary and are subject to usage, location, environment and maintenance requirements as stipulated in warranty documents.

Contact us on: 044 533 3663 | [sales@rgawindows.co.za](mailto:sales@rgawindows.co.za) | [www.rgawindows.co.za](http://www.rgawindows.co.za)

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