

These terms and conditions of sale (**Terms and Conditions**) govern the sale of goods, merchandise and services (**Goods**) by JELD-WEN AUSTRALIA PTY LIMITED (ACN 087 012 226) (ABN 62 087 012 226) and any of its associated companies or businesses and any of their subsidiaries (all of which are referred to as **JELD-WEN**). Together with any order for Goods accepted by JELD-WEN, these Terms and Conditions comprise an agreement between JELD-WEN and the person, firm or company placing the order (**Customer**) for the supply of those Goods.

These Terms and Conditions apply to the exclusion of any terms on any order form or other document issued by the Customer to JELD-WEN.

Any Customer wishing to purchase Goods from JELD-WEN, must read and accept these Terms and Conditions, and these Terms and Conditions are to be read together with each of the following JELD-WEN policies, prior to proceeding with any such purchase:

- JELD-WEN Warranty Policy, available on the JELD-WEN website.
- JELD-WEN Terms of Use of websites and online shop, available on the JELD-WEN website.
- JELD-WEN Privacy Policy, available on the JELD-WEN website.

## 1. DEFINITIONS AND INTERPRETATION

- 1.1 **Australian Consumer Law** means Schedule 2 of the Competition and Consumer Act 2010 (Cth).
- 1.2 **Business Day** means a day that is not a Saturday, Sunday or any other day which is a public holiday or a bank holiday in the place where an act is to be performed or a payment is to be made.
- 1.3 **Consumer** has the meaning given at section 3 of the Australian Consumer Law.
- 1.4 **Credit Agreement** means any agreement between JELD-WEN and the Customer under which JELD-WEN has agreed to supply Goods to the Customer from time to time on credit terms.
- 1.5 **Domestic Building Acts** means:
- (a) the Home Building Act 1989 (NSW);
  - (b) the Domestic Building Contracts Act 2000 (Qld);
  - (c) the Domestic Building Contracts Act 1995 (Vic); and
  - (d) the Home Building Contracts Act 1991 (WA);
  - (e) the Building Work Contractors Act 1995 (SA);
  - (f) the Building Act 2016 (TAS);
  - (g) the Building Act 2004 (ACT);
  - (h) the Building Act 1993 (NT),
- as amended from time to time, and includes any other laws or regulations which imply certain warranties into the contract between JELD-WEN and the Customer.
- 1.6 **Electronic Transactions Acts** means the Electronic Transactions Act 1999 (Cth) and the substantially similar Electronic Transactions Acts enacted in each State and Territory of Australia.
- 1.7 **Force Majeure Event** means any event arising from, or attributable to, acts, events, omissions or accidents which are beyond the reasonable control of JELD-WEN including strikes and other industrial action, fires, explosions, floods, riots, lock-outs, injunctions, interruptions of transportation, data breaches, IT systems hacking or other cybersecurity attacks, accidents, war, acts of terrorism, governmental action, viruses, pandemics, epidemics, public health emergencies and governmental actions, laws and regulations taken in response to same.
- 1.8 **Glass** means Goods made out of glass and the components of glass within a JELD-WEN Good, including splashbacks, mirrors, glass components of windows and doors, and glass components of shower screens. This definition of Glass does not include IGU or THS, which have their own separate meaning.
- 1.9 **IGU** means insulated glass units.
- 1.10 **Insolvency Event** means:
- (a) in relation to a body corporate or other entity, a liquidation or winding up, the appointment of a controller, administrator, receiver, manager or similar insolvency administrator to a party or any substantial part of its assets or the entering into a scheme or arrangement with creditors;
  - (b) in relation to an individual, becoming bankrupt or entering into a scheme or arrangement with creditors; or
  - (c) in relation to any of the foregoing, the occurrence of any event that has a substantially similar effect to any of the above events.
- 1.11 **PPSA** means the Personal Properties Security Act 2009 (Cth).
- 1.12 **Privacy Policy** means the JELD-WEN 'Privacy Policy' relating to the collection, handling and use of personal information by JELD-WEN, as amended from time to time, available on the JELD-WEN website.
- 1.13 **Services** means the services, if any, to be supplied with the Goods and the subject of an order and the term "Goods" is taken to include any Services to be supplied.
- 1.14 **Terms of Use** means the JELD-WEN 'Terms of Use' policy, applicable to any use of JELD-WEN websites and online shops by individuals (including Customers), as amended from time to time, available on the JELD-WEN website.
- 1.15 **THS** means toughened and heat strengthened glass goods.
- 1.16 **Warranty Policy** means the JELD-WEN standard warranty policy, as amended from time to time, available on the JELD-WEN website.
- 1.17 Headings are for convenience only and do not form part of these Terms and Conditions.
- 1.18 References to the singular include the plural and the plural include the singular.

## 2. ORDERING GOODS

- 2.1 Before ordering Goods from JELD-WEN, the Customer must check and be satisfied with all details of the Goods, including in relation to quantities, description, sizes, dimensions, colour, glass (if not clear float) and accessories. To the extent permitted by law, JELD-WEN will not be liable for any loss suffered because the Customer failed to check such details.
- 2.2 By ordering Goods from JELD-WEN, the Customer is offering to purchase the Goods in accordance with and subject to these Terms and Conditions.
- 2.3 Subject to the terms of any Credit Agreement between JELD-WEN and the Customer, JELD-WEN reserves the right to refuse any order that a Customer places, including where there are errors, inaccuracies or out-of-date information regarding pricing, shipping, payment terms, or return policies on JELD-WEN's website (Errors) and which erroneous information has been used in the order.
- 2.4 If JELD-WEN discovers an Error after Goods have been ordered, JELD-WEN will inform the Customer of this as soon as possible and give the Customer the option of reconfirming its order at the correct price or cancelling it. If the Goods ordered are unavailable, JELD-WEN will inform the Customer of this as soon as possible and give the Customer the option of ordering alternative suitable Goods or cancelling the order. If JELD-WEN is unable to contact the Customer, JELD-WEN will treat the order as cancelled. In the unlikely event the order is cancelled and the Customer has already paid for the Goods, the Customer will receive a full refund.
- 2.5 The Customer must be over 18 years of age (in the case of a natural person) and possess a valid credit card or debit card issued by a bank or financial institution that is acceptable to JELD-WEN. Some orders may be subject to fraud checks by JELD-WEN, in which case the Customer may be required to provide additional verification or identification information.

- 2.6 An agreement to supply the Goods the subject of an order comes into effect when the following occurs:
- (a) **[for online sales]** the Customer confirms the Goods they are proposing to purchase are those listed in their 'shopping cart' and has input all required details, including their selection of one of the available payment methods; and/or
  - (b) **[for offline sales]** the Customer gives JELD-WEN a signed quotation and makes payment to JELD-WEN.
- 2.7 JELD-WEN may charge a reasonable administration fee for any payment made by credit card and the amount to be charged will be advised to the Customer before the Customer is invited to select their payment method.
- 2.8 Goods may require Customer assembly and installation, in which case such Goods will be provided to the Customer with accompanying user guides and installation instructions (these are also available for download from the JELD-WEN website). The Customer acknowledges that failure to properly or adequately follow the user guides or installation instructions for Goods (and having Goods assembled by third parties) may impact or void an applicable warranty for those Goods.
- 2.9 JELD-WEN may, including at the request of the Customer, provide to the Customer a quotation for installation and assembly Services.
- 2.10 All prices on the JELD-WEN website are in Australian dollars (AUD) and include GST. JELD-WEN is not responsible for varying currency conversion rates charged by the Customer's bank or financial institution as a result of the Customer's purchase of JELD-WEN Goods (e.g. if the Customer is placing orders using a currency other than AUD, requiring conversion).
- 2.11 Unless otherwise stated in an order, all Glass to be supplied by JELD-WEN shall be clear Glass.
- 2.12 If scaffolding and/or hoisting facilities are required for the removal of the Goods from the delivery vehicle or for their installation, those facilities shall all be the responsibility of and at the cost of the Customer.

### 3. CHANGES AND CANCELLATIONS

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- 3.1 Before the Customer places an order:
- (a) the Customer must inform JELD-WEN on its order as to any specific purposes for which the Goods are to be used which may require any modifications to the Goods; and
  - (b) such modifications shall only form part of an order and shall only be binding on JELD-WEN if JELD-WEN agrees in writing to conform to those additional modification or specifications.
- 3.2 Before JELD-WEN accepts an order, the Customer may:
- (a) request JELD-WEN to vary (including as to quantity or types of Goods) the order; and
  - (b) cancel the order without any cost or liability.
- 3.3 After JELD-WEN has accepted an order, the Customer may only request to cancel or change (including as to quantity or types of Goods or Services) the order if:
- (a) the request is in writing (including by email); and
  - (b) the request is sent to JELD-WEN at least fourteen (14) calendar days prior to the agreed delivery date for the relevant Goods, **(Change Request)**.
- 3.4 The Customer acknowledges and agrees that:
- (a) JELD-WEN is under no obligation to accept a Change Request, including where JELD-WEN has already incurred costs or expenses in processing an order in anticipation of the supply of the ordered Goods including manufacturing or modifying Goods specifically for the Customer, which it cannot reasonably recover;
  - (b) JELD-WEN may require as a condition of its agreement to the Change Request that the Customer pay reasonable charges for such cancellation or change, which take into account expenses incurred and commitments made by JELD-WEN before the cancellation or change; and

- (c) on receipt of a Change Request, JELD-WEN may issue to the Customer a quotation setting out the proposed adjusted price for the Goods the subject of the Change Request, and any updates to details necessary to accommodate the Change Request (such as a new delivery date). The Customer may then place an order for the Goods in accordance with the quotation.

### 4. TERMS OF PAYMENT

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- 4.1 Unless otherwise agreed by JELD-WEN, and subject to any restrictions imposed by the Domestic Building Acts, the Customer must make full and final payment to JELD-WEN of all amounts stated for the Goods on the payment terms as applicable to the Customer as set out below:
- (a) **[for online sales]** at the time of confirmation of their order through the online store; or
  - (b) **[for offline retail sales]** in accordance with the terms of any invoice issued by JELD-WEN in respect of the Goods and, in any event, prior to being entitled to receipt of the Goods; or
  - (c) **[for sales pursuant to a Credit Agreement]** within thirty (30) days from the end of the month on which delivery of the Goods occurs.
- 4.2 Customers who have overdue accounts are precluded from participating in any special deals, discounts, bonus payment redemptions, rebates and all other incentive programs until their accounts are paid up to date.
- 4.3 If at any time monies are overdue or any trading account the Customer maintains with JELD-WEN is in arrears, then at the option of JELD-WEN (but subject always to any restrictions imposed by the Domestic Building Acts) the whole account balance shall become immediately due and owing by the Customer.
- 4.4 JELD-WEN may charge interest on all overdue amounts at a per annum rate that is the cash rate determined and published by the Reserve Bank of Australia from time to time plus 10% (that is, rate = cash rate plus 10), calculated and payable daily, from the due date until the invoice is paid in full.
- 4.5 The Customer is liable to pay to JELD-WEN and JELD-WEN may recover from the Customer all reasonable costs, expenses and disbursements incurred by JELD-WEN (including legal costs on a solicitor/client basis) in collecting or attempting to collect amounts due to JELD-WEN.

### 5. PRICES

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- 5.1 The Customer must pay to JELD-WEN all charges, duties, imposts, taxes (including any goods and services taxes and sales taxes) and similar amounts payable in relation to the sale or supply of any Goods by JELD-WEN to the Customer.
- 5.2 Prices given by JELD-WEN as part of a quotation are current only as at the date the quotation is given, and JELD-WEN reserves the right to reflect any changes to its costs in providing the Goods by amending the price given in a quotation at any time, prior to the parties entering into an agreement for the supply of Goods at a particular price.

## 6. DELIVERY

- 6.1 JELD-WEN will use its best endeavours to deliver the Goods within the time stated on the order accepted by JELD-WEN.
- 6.2 Unless otherwise agreed, JELD-WEN will choose the method and carrier for delivery of Goods.
- 6.3 The Customer authorises JELD-WEN to deliver the Goods to the place nominated by the Customer and to leave the Goods at such place whether or not any person is present to accept delivery (unless otherwise instructed by the Customer).
- 6.4 JELD-WEN may charge the Customer for packing, crating and delivery (**Fulfilment Charges**) in accordance with JELD-WEN's current advertised rates as at the date of dispatch or, if there are no current advertised rates, at reasonable rates. Unless otherwise agreed, the Customer must pay all Fulfilment Charges at the same time as payment of the price of the Goods.
- 6.5 For clarification, JELD-WEN may change any Fulfilment Charges if this becomes necessary due to a Change Request or due to other changes made by the Customer (such as requiring delivery to a different address).
- 6.6 Delivery of the Goods shall be deemed to occur when they are handed to the Customer or the Customer's representative, or are delivered to the premises, site or carrier nominated by the Customer.
- 6.7 The Customer must accept delivery of the Goods or make alternative delivery arrangements within seven (7) days of JELD-WEN notifying the Customer that the Goods are available for delivery or collection. JELD-WEN may charge a minimum fee of \$50 plus two (2) percent of the order value per week or part week, if the Customer fails to accept or make alternative arrangements for delivery or collection within seven (7) days of being advised that delivery is ready.
- 6.8 Written advice to the Customer that Goods are ready for delivery whether in whole or in part shall constitute a tender of the Goods for the purposes of any payments due on and from delivery under clause 4 of these Terms and Conditions.
- 6.9 Where the parties have agreed that the Customer will advise JELD-WEN of a date for delivery (**Load Date**), the Customer must:
  - (a) give sufficient notice of the Load Date (being not less than the standard published lead time for the Goods to be manufactured and delivered); and
  - (b) ensure that the Load Date is not more than ninety (90) days after the date of the Customer's order. To the extent permitted by law, the Customer shall be responsible to JELD-WEN for any extra costs (which term shall include actual costs and imputed costs for storage, handling or demurrage) incurred by JELD-WEN as a result of failure of the Customer to take delivery of the Goods at the time and place specified. JELD-WEN will be entitled to a lien over the Goods until such costs have been paid in full.
- 6.10 If the Customer is required to give JELD-WEN notice of a load date under clause 6.9, and fails to do so within ninety (90) days after placing its order, JELD-WEN may:
  - (a) review and vary the price payable by the Customer for the Goods to the extent permitted by law, if JELD-WEN considers it reasonable to increase those prices to reflect JELD-WEN's then current prices for such Goods (or equivalent Goods), in which case the Customer must pay the difference on demand; and/or
  - (b) supply to the Customer equivalent Goods to those ordered but which may contain slight variations in design. Such variations will not materially affect the dimensions, operation or appearance of the Goods. JELD-WEN must inform the Customer of such variations at the time of delivery of the Goods.
- 6.11 If, due to the fault of the Customer, the Customer fails to accept delivery of any part of the Goods which JELD-WEN has dispatched in conformity with an order, and such part of the Goods is returned to JELD-WEN and re-dispatched for re-delivery subsequently, then JELD-WEN may, to the extent permitted by law, require the Customer to pay any additional delivery costs or charges associated with that re-delivery.

## 7. TITLE TO GOODS AND PERSONAL PROPERTY SECURITIES

- 7.1 For the purposes of the PPSA (as amended from time to time) "Goods" in this clause means any and all present and after acquired goods supplied by JELD-WEN to the Customer;
- 7.2 The Goods shall be entirely at the risk (including loss, damage or deterioration) of the Customer from the time of delivery of the Goods.
- 7.3 JELD-WEN retains full title to the Goods until JELD-WEN receives payment in full for the Goods and all other amounts owed by the Customer to JELD-WEN.
- 7.4 Until all monies owing to JELD-WEN by the Customer have been paid:
  - (a) JELD-WEN has the right to call for or recover possession of the Goods (for which purpose JELD-WEN's employees or agents may enter onto the Customer's premises and/or sites controlled by the Customer) and the Customer must deliver up the Goods if so directed by JELD-WEN;
  - (b) the Customer:
    - (A) agrees that the relationship between the Customer and JELD-WEN shall be fiduciary and the Customer shall keep the Goods safely, securely and separately stored and marked in a manner which clearly indicates that they belong to JELD-WEN;
    - (B) has the right to resell the Goods in the ordinary course of the Customer's business as JELD-WEN's fiduciary agent but must not otherwise dispose of or encumber the Goods;
    - (C) shall not mix the Goods with or attach them to other materials or otherwise make them unable to be returned to JELD-WEN in their original state;
    - (D) agrees that if the Goods are incorporated with goods of the Customer, the resultant product shall become and be deemed to be the sole property of JELD-WEN. If the Goods are incorporated in any way with the property of a party other than the Customer, the resultant product shall become and be deemed to be owned in common by JELD-WEN with that other party (or parties) on a pro-rata basis to be calculated by reference to the cost to the Customer of the incorporated materials; and
    - (E) will hold any proceeds (as that term is defined in the PPSA) of any resale, disposal or other dealing with the Goods or any product incorporating the Goods (including sale or supply to a party other than the Customer) in trust for JELD-WEN and shall pay the proceeds into a separate fiduciary account to be held in trust for JELD-WEN until accounted for to JELD-WEN at the demand of JELD-WEN.
- 7.5 To avoid any doubt, for the purposes of the PPSA, it is the intention of the parties by this clause 7 that there is created for the benefit of JELD-WEN a Purchase Money Security Interest in the Goods;
- 7.6 The Customer agrees that JELD-WEN may register any personal property security interest created by these Terms and Conditions on the Personal Property Securities Register and the Customer waives its rights to receive a verification statement (as that term is defined in the PPSA) in respect of any financing statement or financing change statement (as those terms are defined in the PPSA) registered by JELD-WEN in respect of any personal property of the Customer. The parties agree that, insofar as the provisions of Chapter 4 of the PPSA are for the benefit of the Customer or place an obligation on JELD-WEN, those provisions will apply only to the extent that they cannot be contracted out of or to the extent that JELD-WEN otherwise agrees in writing and, for the avoidance of any doubt:
  - (a) they agree that they contract out of and that nothing in the provisions of Sections 95, 96, 117, 118, 121(4), 130, 132(3)(d), 132(4), 142 and 143 of the PPSA will apply to these Terms and Conditions or the securities granted under these Terms and Conditions;
  - (b) they agree to waive any rights under Sections 95, 123, 129, 130, 130(4); 132(3) (d), 135, and 143 of the PPSA; and
  - (c) the Customer hereby consents and appoints JELD-WEN to be an interested person and the Customer's authorised representative for the purposes of section 275(9) of the PPSA.

## 8. DEFECTS

- 8.1 The Customer shall inspect the Goods as soon as practicable on receipt of delivery and shall within fourteen (14) days notify JELD-WEN of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote by giving written notice and in addition providing JELD-WEN with photographic evidence of any such allegation.
- 8.2 The Customer agrees to keep the Goods referred to in any notice given under this clause (and in the case of shortages the remainder of the Goods delivered), in the condition in which they are delivered and will not install any such Goods until JELD-WEN has had the reasonable opportunity to inspect them.
- 8.3 The Customer shall afford JELD-WEN a reasonable opportunity to inspect the Goods within a reasonable time following delivery if the Customer believes the Goods are defective in any way.
- 8.4 If the Customer should fail to comply with the provisions in this clause, the Goods shall be prima facie presumed to be free from any defect or damage.
- 8.5 Subject to clauses 10 and 11 of these Terms and Conditions, for defective Goods, which JELD-WEN has agreed in writing that the Customer is entitled to reject following JELD-WEN having inspected the Goods or having had the reasonable opportunity to inspect them, JELD-WEN's liability is limited to either (in JELD-WEN's absolute discretion) replacing the Goods or repairing the Goods.
- 8.6 If JELD-WEN delivers less than the full quantity of Goods ordered the Customer is not entitled to reject those Goods delivered unless JELD-WEN is not able to cause Goods to be delivered to make up the shortfall within a reasonable time.
- 8.7 If JELD-WEN delivers extra or different Goods the Customer may reject only the extra or different Goods.

## 9. RETURNS

- 9.1 Returns will only be accepted provided that:
  - (a) in respect of allegedly defective Goods, the Customer has complied with the provisions of clauses 8.1, 8.2 and 8.3; and
  - (b) JELD-WEN has agreed in writing to accept the return of the Goods; and
  - (c) any non-defective Goods are returned at the Customer's cost within fourteen (14) days of receipt of JELD-WEN's agreement to accept the return of the Goods given under Clause 9.1(b);
  - (d) the Goods are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances; and
  - (e) JELD-WEN will not be under any obligation to accept the return of the Goods which have not been stored or used in a proper manner.
- 9.2 JELD-WEN is under no obligation but may (in its absolute discretion) accept the return of non-defective Goods for credit, however such return of Goods will be subject to the Customer paying for and/or reimbursing JELD-WEN for all costs associated with the return of the Goods to JELD-WEN and a handling fee of up to 10% of the price of the returned Goods.
- 9.3 The following Goods cannot be returned to JELD-WEN by the Customer for credit:
  - (a) non-defective Goods which are specifically made, made to measure, modified or imported by JELD-WEN for the Customer; and/or
  - (b) Goods altered or damaged by the Customer.

## 10. LIABILITY AND AUSTRALIAN CONSUMER LAW

- 10.1 Clause 10.2 below applies only to Customers that are Consumers (that is, where JELD-WEN supplies Goods and/or Services to a Customer where under section 3 of the Australian Consumer Law the Customer is deemed to be a Consumer).
- 10.2 Where Goods and Services are supplied by JELD-WEN to the Customer, the Goods and Services come with guarantees that cannot be excluded under the Australian Consumer Law.  
For major failures with the Services, the Customer is entitled:
  - (a) to cancel any agreement for the supply of the Service with JELD-WEN; and
  - (b) to a refund for the unused portion, or to compensation for its reduced value.The Customer is also entitled to choose a refund or replacement for major failures with Goods. If a failure with the Goods or a Service does not amount to a major failure, the Customer is entitled to have the failure rectified in a reasonable time. If this is not done the Customer is entitled to a refund for the Goods and to cancel the agreement for the Service and obtain a refund of any unused portion. The Customer is also entitled to be compensated for any other reasonably foreseeable loss or damage from a failure in the Goods or Services.
- 10.3 Clause 10.2 concerns specific rights of Consumer Customers under the Australian Consumer Law. For any and all other claims by Customers associated with the supply of Goods and/or Services against JELD-WEN (whether for breach of contract, negligence or on any other basis):
  - (a) JELD-WEN's total aggregate liability will be limited to the total amount actually paid by the Customer for the Goods or Services that are the subject of the claims; and
  - (b) JELD-WEN will not be liable to the Customer for any loss that does not arise naturally, that is, according to the usual course of things from the relevant breach, act or omission, even if such loss was known or ought reasonably to have been known to JELD-WEN.
- 10.4 Subject to clause 11 and apart from as otherwise provided for above in this clause 10, the only conditions, guarantees and warranties which are binding on JELD-WEN in respect of the state, quality or condition of the Goods and the Services are those imposed by statute (including, if applicable, the Domestic Building Acts) which cannot be excluded.

## 11. WARRANTIES

- 11.1 JELD-WEN provides warranties for Goods and Services set out in the Warranty Policy.
- 11.2 If there is any inconsistency or conflict between what is stated in these Terms and Conditions and in the Warranty Policy, then these Terms and Conditions shall prevail to the extent of the inconsistency or conflict unless JELD-WEN otherwise agrees.

## 12. DEFAULT AND TERMINATION

- 12.1 Either party may terminate an agreement for the supply of Goods with immediate effect by written notice to the other party, if the other party:
  - (a) is the subject of an Insolvency Event; or
  - (b) has breached the terms of the agreement, including these Terms and Conditions, and, if the breach is capable of remedy, has not remedied the breach within fourteen (14) days of receiving notice requiring the breach to be remedied.



- 12.2 On termination of any such agreement:
- by the Customer, JELD-WEN must refund to the Customer any amount paid by the Customer to JELD-WEN for Goods or Services which have not yet been delivered or performed;
  - by either party, all monies owed by the Customer to JELD-WEN for Goods or Services which have been delivered or performed will become immediately due and payable; and
  - any rights or obligations that by their nature are intended to survive termination or expiration will continue, and each party retains any rights, entitlements or remedies it has accrued before termination.

## 13. PRIVACY

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- 13.1 The Customer acknowledges that JELD-WEN may collect personal and credit information in connection with JELD-WEN's dealings with the Customer in accordance with JELD-WEN's Privacy Policy, the Privacy Act 1988 (Cth), the Privacy (Enhancing Privacy Protections) Act 2012, and the Australian Privacy Principles, and the Customer consents to that information being collected.
- 13.2 A copy of JELD-WEN's privacy related documents will be provided to the Customer upon request in writing, and can be found on our website at <http://www.jeld-wen.com.au/>.

## 14. FORCE MAJEURE EVENTS

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- 14.1 Neither party will be liable for any failure to perform or delay in performing its obligations under the Agreement if that failure or delay is due to the occurrence of a Force Majeure Event.
- 14.2 If a Force Majeure Event exceeds thirty (30) Business Days, either party may immediately terminate an agreement for the supply of Goods by written notice to the other party, at which time JELD-WEN shall provide to the Customer a full refund for all amounts paid by Customer for Goods not delivered, or Services not performed.

## 15. USE OF GOODS

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- 15.1 The Customer acknowledges that the Goods are not not designed or intended for use in hazardous environments requiring fail-safe performance, including in the operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, weapons systems, direct life-support machines or any other application in which the failure of the Goods could lead directly to death, personal injury, or severe physical or property damage (collectively, **High Risk Activities**).
- 15.2 The Customer agrees not to use any Goods:
- as part of any aircraft;
  - in connection with any High Risk Activities; or
  - for any other unintended purpose.
- 15.3 If the Customer or any other person does use any Goods in a manner as referred to at clause 15.2 above, the Customer (or other person) does so at its own risk and JELD-WEN will not be liable in any way for any harm, loss or damage that may result to the Customer or any other person or entity as a result.

## 16. INTELLECTUAL PROPERTY

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- 16.1 Where Goods are manufactured to the Customer's specifications, the Customer will indemnify and keep indemnified JELD-WEN against any liability to or action by a third party for infringement or alleged infringement of any intellectual property right, including a patent, registered design, trademark or copyright arising from JELD-WEN complying with the Customer's specifications.

- 16.2 No right or licence is hereby granted to the Customer to use any patent, copyright, registered design, trademark or other industrial or intellectual property right of JELD-WEN or otherwise.

## 17. WINDOWS, LOUVRES AND DOORS

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- 17.1 The Customer must, in accordance with the relevant Australia Standards, advise JELD-WEN in writing of:
- the window ratings;
  - design window pressures;
  - suitable terrain category;
  - any design specifications; and
  - the relevant and applicable building codes and Australian Standards, (**Building Specifications**) applicable to the installation site for all windows, louvres and doors.
- 17.2 Should the Customer fail to advise JELD-WEN of the Building Specifications in writing:
- all Goods produced will be suitable for fully sheltered terrains and will sustain the minimum ratings for wind and water.
  - to the extent permitted by law, and subject to clause 11, JELD-WEN will not be liable for the non-compliance or faulty performance of any windows, louvres or doors where the Customer failed to advise JELD-WEN in writing of the Building Specifications.

## 18. ELECTRONIC COMMUNICATIONS

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- 18.1 The Customer agrees that email or other electronic communications from JELD-WEN to the Customer constitute an "electronic communication" within the meaning of the Electronic Transactions Acts and agrees to have invoices and statements and other communications from JELD-WEN via email. The Customer acknowledges that in agreeing to receive invoices and statements via email and the service of notices via email under the Electronic Transactions Acts applicable in the State or Territory where Goods are delivered to the Customer, the Customer is in all instances designating "an information system for the purposes of receiving electronic communications" within the meaning of the Electronic Transactions Acts.

## 19. GENERAL TERMS

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- 19.1 If anything in these Terms and Conditions forming part of an agreement for the supply of Goods is unenforceable, illegal or void then it is severed and the rest of these Terms and Conditions and the agreement shall remain in force.
- 19.2 These Terms and Conditions are not to be construed to the disadvantage of a party because that party was responsible for their preparation.
- 19.3 A party may not assign or transfer any agreement for the supply of Goods or any part of it without the prior written consent of the other party, such consent not to be unreasonably withheld.
- 19.4 The Agreement is governed and construed according to the laws of the State or Territory of Australia in which the Goods were purchased or the Services provided (**Territory**).
- 19.5 Each of the Customer and JELD-WEN submit to the non-exclusive jurisdiction of Courts of the Territory and the Commonwealth of Australia including the Federal Court and any Courts that may hear appeals from those Courts about any proceedings in connection with the Agreement.