



TRADING TERMS AND CONDITIONS  
FOR SALE OF GOODS

**Windsor Architectural Hardware Limited**

**NZ Company No: 1021538**

**(Company)**

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Invercargill, 9840, New Zealand**

**Phone: 1800 841 643 (Australia), 0800 607 028 (New Zealand)**

## Disclosure of Key Terms relating to the supply of goods or services to consumers

### **Section 47A Fair Trading Act 1987 (NSW) (“the Act”)**

Pursuant to section 47A of the Act, a supplier must, before supplying a consumer with goods or services in New South Wales (NSW), take reasonable steps to ensure the consumer is aware of the substance and effect of any term or condition relating to the supply of the goods or services that may substantially prejudice the interests of the consumer.

The following contains a summary of key terms in the attached Trading Terms between Windsor Architectural Hardware Limited (Us, We, Our) and the Customer (You), which You should be made aware of as per the requirements of the Act.

Words not defined in this summary have the same meaning as set out in the Terms:

#### **1. Clause 3.2- Exclusion of Warranties**

This clause excludes all warranties not set out in the Terms or any other warranty document (to the extent possible) and makes clear that We are not liable to compensate you for:

- (a) Any increased costs or expenses you may incur;
- (b) Any loss of profit, revenue, business, contract or anticipated savings;
- (c) Any loss or expense resulting from a claim by a third party; or
- (d) Any special, indirect or Consequential Loss or damage of any nature.

#### **2. Clause 3 – Limitation of Liability**

This clause limits the remedies available to You if the Goods or services provided by Us are faulty, for example, we may replace the Goods or provide a refund at our election.

This clause also seeks to limit the timeframe for any claim by You relating to the short delivery of Goods.

#### **3. Clause 7.3.1 - Indemnity against trespass claim**

This clause requires You to indemnify Us against any claim for trespass brought against us by a third party if we enter that party's premises to repossess our goods when you fail to pay Us.

#### **4. Clause 8.6.2 - Indemnity for our costs in relation to the Personal Property Securities Act 2009 (Cth) (PPS) rights**

This clause requires You to indemnify and pay to Us the costs and expenses We incur in registering, amending, discharging any PPS registrations we may make against You and for costs and expenses We incur in enforcing or attempting to enforce our rights under the PPS Act.

#### **5. Clause 11 – Indemnity**

This clause requires You to indemnify Us against any loss or damage We may suffer as a result of your breach of our Trading Terms, which means You will pay us any loss or damage We suffer.

## Trading Terms and Conditions

### For Sale of Goods

These Trading Terms & Conditions ("Terms") apply (unless otherwise previously agreed in writing) to the supply of Goods by the Company to a Customer from time to time. Any supply of Goods by the Company to the Customer made after the date of acceptance of these Terms is a supply pursuant to the supply agreement constituted by these Terms and the relevant order accepted by the Company ('Agreement') and any such supply does not give rise to a new or separate agreement.

#### 1. Interpretation

In these Terms unless the contrary intention appears:

Accession means any Goods which are installed in or affixed to other goods.

Additional Charges includes all delivery, handling and storage charges, goods and services tax, stamp duty, interest, legal costs on indemnity basis and other costs of recovery of unpaid money, and all other government imposts and all money, other than the Purchase Price, payable by the Customer to Company arising out of the sale of the Goods.

Consequential Loss means increased costs or expenses; loss of revenue; loss of profit or anticipated profit; loss of business; loss of business reputation; loss of opportunities; loss of anticipated savings; loss of goodwill; loss or expense resulting from a claim by a third party; special or indirect loss or damage of any nature whatsoever caused by the Company's failure to complete or delay in completing the order to deliver the Goods; and any other loss suffered by a party as a result of a breach of this Agreement that cannot reasonably be considered to arise directly and naturally from that breach.

Customer means the person to or for whom the Goods are to be supplied by Company.

Force Majeure Event means any event outside the reasonable control of the Company including acts of God, war, riots, strikes, lock outs, trade disputes, break downs, mechanical failures, interruptions of transport, government action (including lock downs), pandemic, epidemic or any other cause whatsoever, whether or not of a like nature to those specified herein.

Goods means the goods sold to the Customer by Company and includes any services (if any) provided by Company to Customer.

Intellectual Property Right means any patent, registered design, patent, trademark, copy-right, trade secret or any other proprietary right of a third party or parties, registered or unregistered, in any country.

PPSA means the Personal Property Securities Act 2009 (Cth).

Purchase Price means the list price for the Goods as charged by Company at the date of order or such other price as may be agreed by Company and the Customer prior to delivery of the Goods.

#### 2. Order for Goods

2.1 An order given to Company is binding on Company and the Customer, if:

- 2.1.1 the Customer provides the Company a written or verbal order request and a written acceptance is provided by the Company; or
- 2.1.2 the Goods are supplied by Company in accordance with the order.

2.2 An acceptance of the order by Company is then to be an acceptance of these Terms by Company and the Customer and these Terms will override any conditions contained in the Customer's order. Company reserves the right to accept a part only of any order by notifying the Customer in writing or by delivering the Goods to the Customer. No order is binding on Company until accepted by it.

- 2.3 An order which has been accepted in whole or in part by Company cannot be cancelled by the Customer without obtaining the prior written approval of Company, which it may refuse in its absolute discretion.

### **3. Limitation of Liability**

- 3.1 The Company's liability is limited, to the extent permissible by law and at the Company's option, to;
- 3.1.1 in relation to the Goods:
- (a) the replacement of the products or the supply of equivalent products;
  - (b) the repair of the products;
  - (c) the payment of the cost of replacing the products or of acquiring equivalent products; or
  - (d) The payment of the cost of having the products repaired.
- 3.1.2 Where the Goods are services:
- (a) the supply of service again; or
  - (b) the payment of the cost of having the services supplied again.
- 3.2 To the extent permitted at law, all other warranties whether implied or otherwise, not set out in these Terms or any warranty document provided by the Company are excluded and Company is not liable in contract, tort (including, without limitation, negligence or breach of statutory duty) or otherwise to compensate Customer for:
- 3.2.1 any increased costs or expenses;
- 3.2.2 any loss of profit, revenue, business, contracts or anticipated savings;
- 3.2.3 any loss or expense resulting from a claim by a third party; or
- 3.2.4 any special, indirect or Consequential Loss or damage of any nature whatsoever caused by Company's failure to complete or delay in completing the order to deliver the Goods.
- 3.3 To the extent permitted at law, any claims to be made against the Company for short delivery of Goods must be lodged with the Company in writing within 7 days of the delivery date.

### **4. Delivery**

- 4.1 The times quoted for delivery are estimates only and Company accepts no liability for failure or delay in delivery of Goods. The Customer is not relieved of any obligation to accept or pay for Goods by reason of any delay in delivery. Goods may be delivered by instalments at the discretion of Company.
- 4.2 Risk in accepting the Goods passes on delivery to the Customer.
- 4.3 All Additional Charges are payable by the Customer in addition to the Purchase Price of the Goods.

### **5. Returns**

- 5.1 Change of Mind, Incorrectly Ordered or No Longer Required
- 5.1.1 If the Customer has changed its mind, incorrectly ordered or no longer requires the Goods, the Customer may return the Goods provided that:
- (a) the Customer informs the Company in writing of its intention to return the Goods within 14 days of receiving the Goods;

- (b) the Company agrees in writing to the return of Goods;
- (c) the Customer provides a completed Goods Return Form; and
- (d) the Goods are in saleable condition, unused and in the original packaging.

5.1.2 To the extent permitted by law:

- (a) the Company reserves the right to charge a restocking charge of 20% of the Purchase Price of returned Goods for Goods returned pursuant to clause 5.1.1; and
- (b) the Company will not reimburse the Customer for return shipping costs for returns made pursuant to clause 5.1.1.

## 5.2 Damaged, Defective (Faulty) or Incorrect Goods

5.2.1 To the extent permitted at law, if the Customer receives Goods that are damaged, defective (faulty), incorrectly packed or incorrectly invoiced, the Customer may return the Goods provided that:

- (a) the Customer notifies the Company in writing within a reasonable time, and in respect of incorrect Goods, within 7 days of receiving the Goods;
- (b) the Company agrees in writing to the return of Goods; and
- (c) the Customer provides a completed Goods Return Form.

5.2.2 To the extent permitted by law:

- (a) the Company may request further information or photographs of the Goods; and
- (b) the Goods will not be deemed damaged or defective (faulty) if it is in the Company's reasonable opinion that the Goods have become of unacceptable quality following the sale due to the Customer's misuse or failure to take reasonable care in accordance with any instructions accompanying the Goods.

## 6. Price and Payment

- 6.1 The Customer must pay the Purchase Price and the Additional Charges to Company.
- 6.2 If the Customer is in default, Company may at its option withhold further deliveries or cancel a contract without prejudice to any of its existing rights.
- 6.3 All payments are due within 20 days from end of month of the date of invoice. Interest is charged at the rate of 15% per annum from the expiry of that period until the date payment is received by Company.
- 6.4 All amounts payable by the Customer under these Terms must be paid without set-off or counter claim of any kind.
- 6.5 The Customer is also liable to the Company for all Additional Charges, including legal costs on an indemnity basis and debt recovery expenses in relation to any debt collection steps taken by the Company where payment is not made by the Customer in compliance with these Terms.

## 7. Retention of Title

- 7.1 Ownership, title and property in the Goods and in the proceeds of sale of those Goods remains with Company until payment in full for the Goods and all sums due and owing by the Customer to Company on any account has been made. Until the date of payment:

- 7.1.1 the Customer has the right to sell the Goods in the ordinary course of business;
  - 7.1.2 the Goods are always at the risk of the Customer.
- 7.2 The Customer is deemed to be in default immediately upon the happening of any of the following events:
  - 7.2.1 if any payment to Company is not made promptly before the due date for payment;
  - 7.2.2 if the Customer ceases to carry on business or stops or suspends payment or states its intention of so doing or is unable to pay its debts as they fall due or if any cheque or bill of exchange drawn by the Customer payable to Company is dishonoured;
- 7.3 In the event of a default by the Customer, then without prejudice to any other rights which Company may have at law or under this Agreement:
  - 7.3.1 Company or its agents may without notice to the Customer enter the Customer's premises, any premises under the control of the Customer or any premises where the Goods are situated for the purposes of recovering the Goods and the Customer hereby indemnifies the Company and will keep the Company indemnified against any claim for trespass by a third party in respect of the Company exercising its rights under this clause.
  - 7.3.2 Company may recover and resell the Goods;
  - 7.3.3 if the Goods cannot be distinguished from similar Goods which the Customer has or claims to have paid for in full, Company may in its absolute discretion seize all goods matching the description of the Goods and hold same for a reasonable period so that the respective claims of Company and the Customer may be ascertained. Company must promptly return to the Customer any goods the property of the Customer and Company is in no way liable or responsible for any loss or damage to the Goods or for any loss, damage or destruction to the Customer's business howsoever arising from the seizure of the Goods; and
  - 7.3.4 where the Goods are attached or are or have become an Accession, the Company may use reasonable force to remove, detach, disassemble or otherwise take possession of the Goods without liability for trespass, negligence or payment of any compensation to the Customer whatsoever, and the Customer shall indemnify the Company against any such claims brought by any other party.
  - 7.3.5 In the event that the Customer uses the Goods in some manufacturing or construction process of its own or some third party, then the Customer must hold such part of the proceeds of sale of such manufacturing or construction process as relates to the Goods in trust for Company. Such part will be an amount equal in dollar terms to the amount owing by the Customer to the Company at the time of the receipt of such proceeds. The Customer will pay Company such funds held in trust upon the demand of Company.

#### **ADDITIONAL CHARGE OVER PROCEEDS AS ORIGINAL COLLATERAL**

- 7.4 Separately, Customer hereby charges in favour of the Company all its right, title and interest in and to proceeds as original Collateral (as that term is defined by the PPSA) of or arising from sale of the Goods.

## 8. PPSA

- 8.1 Defined terms in this clause have the same meaning as given to them in the PPSA.
- 8.2 Company and the Customer acknowledge that these Terms constitute a Security Agreement and entitle the Company to claim:
  - 8.2.1 a Purchase Money Security Interest ("PMSI") in favour of Company over the Goods supplied or to be supplied to the Customer as Grantor pursuant to these Terms, and its Proceeds; and
  - 8.2.2 a security interest over the Proceeds as original Collateral pursuant to clause 7.4.
- 8.3 The goods supplied or to be supplied under these Terms fall within the PPSA classification of "Other Goods" acquired or to be acquired by the Customer pursuant to these Terms.
- 8.4 The Proceeds of sale of the Collateral referred to in clause 7.4 falls within the PPSA classification of "Account".
- 8.5 Company and the Customer acknowledge that Company, as Secured Party, is entitled to register its Security Interest in the Collateral supplied or to be supplied to Customer pursuant to these Terms and in the relevant Proceeds.
- 8.6 To the extent permissible at law, the Customer:
  - 8.6.1 waives its right to receive notification of or a copy of any Verification Statement confirming registration of a Financing Statement or a Financing Change Statement relating to a Security Interest granted by the Customer to Company.
  - 8.6.2 agrees to indemnify Company on demand for all costs and expenses, including legal costs and expenses on a solicitor / client basis, associated with the;
    - (a) registration or amendment or discharge of any Financing Statement registered by or on behalf of Company; and
    - (b) enforcement or attempted enforcement of any Security Interest granted to Company by the Customer;
  - 8.6.3 agrees that nothing in sections 130 and 143 of the PPSA will apply to these Terms or the Security under these Terms;.
  - 8.6.4 agrees to waive its right to do any of the following under the PPSA:
    - (a) receive notice of removal of an Accession under section 95;
    - (b) receive notice of an intention to seize Collateral under section 123;
    - (c) object to the purchase of the Collateral by the Secured Party under section 129;
    - (d) receive notice of disposal of Collateral under section 130;
    - (e) receive a Statement of Account if there is no disposal under section 132(4);
    - (f) receive a Statement of Account under section 132(3)(d) following a disposal showing the amounts paid to other Secured Parties and whether Security Interests held by other Secured Parties have been discharged.
    - (g) receive notice of retention of Collateral under section 135;

- (h) redeem the Collateral under section 142; and
- (i) reinstate the Security Agreement under section 143.

8.6.5 All payments received from the Customer must be applied in accordance with section 14(6)(c) of the PPSA.

## **9. On-Sale**

The Customer agrees that upon the on-sale of any Goods to third parties, it will:

- 9.1 inform any third party involved of these Terms;
- 9.2 inform any third party of Company's product warranties if any; and
- 9.3 not make any misrepresentations to third parties about the Goods.

## **10. Trustee Capacity**

If Customer is the trustee of a trust (whether disclosed to Company or not), Customer warrants to Company that:

- 10.1 Customer enters into this Agreement in both its capacity as trustee and in its personal capacity;
- 10.2 Customer has the right to be indemnified out of trust assets;
- 10.3 Customer has the power under the trust deed to enter into this Agreement; and
- 10.4 Customer will not retire as trustee of the trust or appoint any new or additional trustee without first advising the Company.
- 10.5 Indemnity  
To the full extent permitted by law, Customer will indemnify Company and keep Company indemnified from and against any liability and any loss or damage Company may sustain, as a result of any breach, act or omission, arising directly or indirectly from or in connection with any breach of any of these Terms by Customer or its representatives.

## **11. Force Majeure**

- 11.1 The Company will not be liable for the consequences of any failure or delay in performing any of its obligations under these Terms to the extent that such failure or delay is due directly or indirectly to any Force Majeure Event.
- 11.2 If a Force Majeure Event arises, the Company will notify the Customer in writing of the Force Majeure Event and the likely impact it will have on the Company's performance under these Terms. If the Force Majeure Event affects the capacity of the Company to complete its material obligations under these Terms in a timely manner, the Company may by notice to the Customer terminate this Agreement without any liability whatsoever on its part arising from that termination.

## **12. General**

- 12.1 Neither party excludes or limits the application of any statute (including but not limited to the Competition and Consumer Act 2010 (Cth) (CCA) as amended from time to time and its schedule 2, the Australian Consumer Law), where to do so would contravene that statute or cause a provision of these Terms to be void. Any stated exclusion or limitation in this Terms is only to the full extent permitted at law.
- 12.2 These Terms are to be construed in accordance with the laws from time to time in the State or Territory in which the Customer's principal place of business is located, and the Commonwealth of Australia. The parties submit to the non-exclusive jurisdiction of the Courts of the Australian State or Territory in which the Customer's principal place of business is located and any courts which may hear appeals from those courts in respect to any proceedings in connection with these Terms.



- 12.3 The Customer agrees that the Company may amend or replace these Terms in its absolute discretion by providing prior written notice to the Customer. The Customer may accept the amended or replacement Terms by advising the Company of its acceptance (whether in writing or otherwise) or by continuing to place orders with the Company after the date notice of the amended or replacement Terms have been provided to the Customer, which shall be deemed as acceptance, provided that the amended or replaced Terms:
- 12.3.1 do not apply to any order accepted by the Company prior to the date stipulated in the notice from which the amended or replacement Terms are to take effect;
  - 12.3.2 do not apply to an order received by the Company before the notice is given to the Customer (unless the Customer agrees to the variation in relation to any such order); and
  - 12.3.3 do not affect the Customer's or the Company's accrued rights or obligations.
- 12.4 The Customer has been provided with an opportunity to seek independent legal and financial advice prior to entering into this Terms.
- 12.5 The Customer acknowledges that it has been provided with an opportunity to read, consider, negotiate and discuss any of these Terms with the Company prior to entering into the Terms.
- 12.6 These Terms contain all of the terms and conditions of the contract between the parties and may only be varied by agreement in writing between the parties.
- 12.7 Any conditions found to be void, unenforceable or illegal may, to that extent be severed from the Agreement.
- 12.8 No waiver of any of these Terms or failure to exercise a right or remedy by Company will be considered to imply or constitute a further waiver by Company of the same or any other term, condition, right or remedy.

Signature: .....

Position: .....

Date: .....