

# CLEARGUARD PTY LTD

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| FM20<br>Rev 2 | General Terms and Conditions of Sale |
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## General Terms and Conditions of Sale

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### 1.0 GENERAL

These terms and conditions of sale ("Conditions") govern all contracts of sale ("Contract"), quotations, invoices and purchase orders between Clearguard Pty Ltd ("Company") and a buyer of goods or services ("Purchaser") unless added to or varied expressly in writing and signed and accepted by the Company. By placing a purchase order a Purchaser shall be taken to have read and accepted these Conditions.

### 2.0 QUOTATIONS

All quotations are valid for 30 days from date of quotation and subject to confirmation before acceptance, unless otherwise stated.

### 3.0 ILLUSTRATIONS

Photographs, illustrations or advertising matter supplied represent generally the specified goods and services, but shall not be taken as necessarily representing the goods supplied to the Purchaser by the Company ("Goods") and services supplied to the Purchaser by the Company ("Services"), and shall not form part of the Contract.

### 4.0 VARIATION IN RATES

The quotation is based on rates of freight, insurance, customs duties, currency exchange, shipping expenses and cartage which rule on the date it is made. Any alterations, either before acceptance or during the currency of the Contract, shall be to the Purchaser's account, unless otherwise agreed to in writing.

### 5.0 TERMS OF PAYMENT AND OWNERSHIP OF GOODS

5.1 Prices quoted or announced by the Company are strictly net unless otherwise set out in the quotations and subject to the provisions of clause 5.15 payment shall be made by the Purchaser:

- (a) for Goods within 30 days from the date of invoice (subject to credit approval prior to supply).
- (b) for Services within 15 days from the date of invoice (subject to credit approval prior to carrying out the Service).

5.2 The Purchaser shall not be entitled to deduct from any invoice any monies by way of retention or otherwise.

5.3 The Purchaser must pay for the Goods or Services notwithstanding minor or inconsequential defects or deviations from the quotation.

5.4 The Company shall be entitled to interest on all sums payable by the Purchaser which shall accrue and be calculated at the rate of 12% per annum on a daily basis from the due date for payment under clause 5.1 to the date on which the sum is paid in full.

5.5 Goods shall remain the sole and absolute property of the Company as legal and equitable owner until the full price of those Goods has been paid to the Company, as well as all other payments due to the Company. Cheques or other negotiable securities given by the Purchaser to the Company shall not be deemed to be payment until cleared.

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- 5.6 Until the Goods and any other Goods and Services are paid for in full:
- (a) the Purchaser acknowledges that it is in possession of the Goods as bailee for the Company;
  - (b) the Purchaser shall store the Goods separately from its own Goods or those of any other person, in a manner which renders them clearly identifiable as the Goods of the Company.
  - (c) the Company may (without prejudice to any of its other rights and without liability to the Purchaser or any other third party for any damages, costs or other liabilities), without previous notice retake and resume possession of Goods which remain the property of the Company and by its servants and agents may enter upon the Purchaser's premises or any other place where the Goods may be for that purpose, upon the occurrence of one of the following events:
    - (i) (where the Purchaser is a corporation) any step is taken to wind up or dissolve the Purchaser, to appoint an administrator, liquidator or similar, or to enforce any encumbrance over any of Purchaser's undertaking or property;
    - (ii) (where the Purchaser is a natural person), the Purchaser becomes insolvent or bankrupt or commits an act of bankruptcy or makes an assignment for the benefit of a creditor; or
    - (iii) the Purchaser fails to pay the whole or any part of the purchase price of transport, delivery or other charges for the Goods or any other Goods or Service when due; or
    - (iv) the Purchaser parts with possession of the Goods otherwise than by way of sale to a customer in the ordinary course of the Purchaser's business; or
    - (v) any other items or Conditions of the contract between the Company and the Purchaser are breached by the Purchaser.
  - (d) for the purposes of clause 5.6(c) the Purchaser shall ensure that the Company has access to the premises on which the Goods are held during business hours and authorises the Company and the Company's employees and agents to enter upon the premises or to exercise any other of the Purchaser's right of entry for that purpose.
- 5.7 Subject to these Conditions, the Purchaser is authorised by the Company to resell the Goods on the express condition that the Purchaser does so as bailee and agent of the Company (providing however that the Purchaser shall not hold itself out as such) and the entire proceeds of the sale are held on trust for the Company and are not mingled with other monies or paid into an overdrawn bank account and shall be identified at all times as the Company's money.
- 5.8 The Purchaser is authorised by the Company to process or incorporate the Goods with any other goods or property on the express conditions that:
- (a) the product of such process or incorporation shall be stored separately and marked so as to be identified as being made from or with the Goods the property of the Company;
  - (b) subject to sub-clause 5.8(c), the Company shall have legal and equitable ownership of the product of such process or incorporation;

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- (c) where the Goods have been incorporated with property owned by another person and the Purchaser has entered into an agreement with the other person in terms of equivalent effect to sub-clause 5.8(b) then ownership of the products of that incorporation shall be held in common with that person or those persons.

### 5.9 Purchaser's Risk

- (a) The Goods are at the Purchaser's risk from:
  - (i) the first actual delivery of the Goods or Services by the Company to the Purchaser or any agent, employee or representative of the Purchaser ("Delivery"); or
  - (ii) from notification by the Company to the Purchaser that the Goods are available for collection.

and in any case despite any subsequent return or retaking of possession by the Company.

- (b) Without limiting the generality of sub-clause 5.9(a), whether or not risk has passed, the Company is under no liability in respect of any damage caused to the Goods during the course of transit except where the Contract is to Deliver to site.
- (c) Until ownership in the Goods has passed to the Purchaser, the Purchaser shall, at its sole expense, keep the Goods in the same condition as that in which they were Delivered and make good any damage or deterioration.

### 5.10 No liability where Purchaser is not a consumer.

Subject to any express provision in these Conditions or in the Contract to the contrary and to the full extent permitted by law, where the Contract does not constitute a supply of Goods or Services to a consumer as defined in the Trade Practices Act 1974 (Cth), the Fair Trading Act 1987 (WA) or analogous legislation in any other jurisdiction:

- (a) the Company gives no condition, warranty or undertaking of any kind as to:
  - (i) the condition, quality or safety of the Goods;
  - (ii) the suitability or fitness for the ordinary or any special use or purpose of the Goods;
  - (iii) the Services;
- (b) the description of the Goods or Services in the quotation, the purchase order or invoice does not import any condition or warranty on the part of the Company;
- (c) all conditions, warranties or liabilities (including liability as to negligence) expressed or implied, whether arising by virtue of any statute or otherwise, relating to the Goods or Services are negated and excluded;
- (d) the Purchaser accepts full responsibility for ensuring that the condition and quality of the Goods are suitable for the purposes of the Purchaser; and

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- (e) where Goods are installed in accordance with instructions of the Company by the Purchaser, their servants or agents, the Purchaser accepts full liability for incorrect installation of the Goods and the burden of proving correct installation will be on the Purchaser.

### 5.11 Company not liable for unsuitable goods

To the full extent permitted by law:

- (a) the Purchaser declares that the Purchaser is relying on the Purchaser's own skill and judgment in selecting the Goods and the suitability of those Goods for the Purchaser's purposes; and
- (b) the Company is under no liability for any unsuitability for any purpose of the Goods (or any goods supplied with the Goods) irrespective of any knowledge which the Company may possess as to the purpose for which the Goods are required.

### 5.12 Limited liability of Company for defective goods

- (a) Subject to clause 9 and to any non-excludable warranties that may be implied by law, the Company is under no liability for any defect (including any defect caused by the loading of the Goods) in, or deterioration or failure of, the Goods (or any goods supplied with the Goods) whether due to design, workmanship or materials or to any cause whatsoever unless the defect is due to the wilful default of the Company.
- (b) The Company is under no liability for any failure of the Goods to correspond with any description (including without limitation, any description relating to quantity, dimensions, weight, place of shipment or other statements relating to transport of the Goods) and all conditions, warranties or other terms whether express or implied statutory or otherwise inconsistent with these Conditions are hereby expressly excluded.

### 5.13 Purchaser not induced by Company to enter Contract

The Purchaser acknowledges that no statement, recommendation, advice or representation given or made by the Company to the Purchaser as to any matter relating to the Goods has in any way induced the Purchaser to enter into the Contract unless stated in these Conditions or the Contract.

### 5.14 Purchaser not to reject the Goods for incorrect quantity

In the case of any shortfall in the quantity of Goods delivered from those stated in the invoice, the Purchaser:

- (a) has no right to reject the Goods or to claim for damages for breach of Contract; and
- (b) is only obliged to pay at the Contract rate for the quantity of Goods delivered.

### 5.15 Goods and Services Tax

- (a) The expression "GST", "input tax credit", "recipient" and "tax invoice" have the meanings given to those expressions in the A New Tax System (Goods and Services) Act 1999. Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under these Conditions are inclusive of GST.

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- (b) Where the Purchaser is required to pay for or reimburse expense or outgoing of the Company, amounts to be paid by the Purchaser is the amount of the expense or outgoing less any input tax credit in respect of such expense or outgoing that the Company is entitled to.
- (c) Any invoice or claim provided by the Company under this agreement will be accompanied by a tax invoice or other approved document providing the Purchaser with the ability to claim an input tax credit. The Purchaser is not required to make the relevant payment until this requirement has been complied with.

### 5.16 Prolongation

Should a delay occur in the Delivery of Goods ordered to site or to the Purchaser's store, the Company reserves the right to store the Goods at its premises or at a mutually acceptable storage area and to obtain payment for the Goods as though the Goods had been Delivered to site or to the Purchaser and further to recover the storage and handling costs involved up to the date that actual Delivery is effected.

### 5.17 Progress Payments

The Company reserves the right to request payment of progress claims for Goods or Services, especially when Goods must be acquired well ahead of scheduled Delivery time or when payment in full for the Goods or Service will be delayed.

## 6.0 INSPECTION DURING MANUFACTURE

The Purchaser shall be allowed access to the Company's premises for the purpose of inspecting the Goods and work being carried out in accordance with the Purchaser's purchase order providing that such inspection shall only be allowed with reasonable notice and by prior arrangement with the Company at a time to suit the Company's convenience which will not impact the production and Delivery schedule. The Company will allow such inspection within 10 working days of any request by the Purchaser.

## 7.0 CANCELLATION FEES

7.1 Should the Purchaser purport to terminate, repudiate, suspend or otherwise cancel the Contract entered into with the Company, then the Company shall be entitled to recover from the Purchaser a proportion of the total purchase price equivalent to the proportion of labour, skill, overhead expenses and materials which in the opinion of the Company it has used or committed in performing the Contract to the total of the labour, skill, overhead expenses and materials that have been allowed to complete the Contract (the "cancellation fee").

7.2 No cancellation fee will apply if the need for cancellation arises out of any default by the Company not caused by factors reasonably beyond the control of the Company.

7.3 The Company's entitlement to recover the cancellation fee shall in no way be regarded as derogating from any other rights or remedies the Company may have.

## 8.0 DELIVERY, COMPLETION AND INSPECTION

8.1 The quotation is for Goods on an ex works basis unless stated to the contrary. No Delivery made from the Company's works or to nominated sites shall be made outside normal working hours unless

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otherwise agreed to by the Company. Delivery terms used have the meaning defined in Incoterms 2010 except to the extent expressly modified by these Conditions or the relevant purchase order.

- 8.2 Any date of Delivery stipulated by the Company is an estimate only and although the Company will use its best endeavours to deliver by the date stipulated the Company will not be liable in any way for any delay in Delivery or any failure to delivery arising from causes beyond its reasonable control.
- 8.3 The Delivery time is computed from the date of receipt by the Company from the Purchaser of a written purchase order and all information necessary to enable work to proceed until the date when the Goods are ready for dispatch from the Company's works, although the price quoted may cover Delivery to another specified place. If the Purchaser is required to approve any drawings or other information then the Delivery time is conditional upon prompt approval by the Purchaser of such drawings or other information.
- 8.4 The Purchaser may reschedule the Delivery date by consultation with the Company without penalty until such time as production has commenced (either at the Company's works or the works of the Company's supplier). Beyond this time the Company may require compensation or progress payments for materials, work in progress, storage and other charges. The Company will as soon as practicable after acceptance of the Purchaser's purchase order request such information from the Purchaser as may be required.
- 8.5 The Purchaser shall inspect the Goods on their arrival at site and shall orally report any damage to the Company immediately and shall give immediate notice by telephone, or facsimile or email (followed by letter) of any matter or things by reason whereof the Purchaser may allege that the Goods are damaged or are not in accordance with the Goods specified in the purchase order. The Company reserves the right on receiving such notice to make immediate arrangements for the Goods to be inspected for the purpose of ascertaining whether the defect or damage is the responsibility of the Company. The intent of this sub-clause is to cover both the Purchaser and the Company against the supply of any incorrect Goods, Goods damaged in transit or Goods damaged whilst in the possession of the Purchaser. If the Purchaser shall give any such notice within the period stipulated then, save for any matter or thing mentioned in the notice, the Goods shall otherwise be deemed to be in all respects in accordance with the purchase order.

## 9.0 WARRANTY

### 9.1 Eighteen month or Twelve month warranty

- (a) Subject to clauses 9.1(b), 9.1(c) and 9.2, the Company warrants all Goods against any defect of work or materials for a period of Eighteen calendar months from the date of Delivery or twelve calendar months from the date of first use of the Goods, whichever is the earlier.
- (b) The Company is not bound by its warranty under clause 9.1(a) unless notification of any alleged defect (specifying the serial number of the Goods, the nature of the alleged defect, the circumstances under which it occurred and a description of the general operating conditions and supported by appropriate photographic evidence) is given to the Company within 10 business days of its discovery.
- (c) If, in the opinion of the Company, the alleged defect constitutes a breach of this warranty and the Purchaser has complied with all the conditions of this warranty, the Company shall, on the Purchaser returning the Goods, carriage paid to such place as the Company directs (and any provision in any statute which states that a buyer is not bound to return to the seller Goods

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which it may rightfully refuse to accept does not apply) make good any such defect free of charge by repair or replacement as the Company may determine.

- (d) Any Goods so repaired or replaced under this warranty will be subject to the warranty during the balance of the said warranty period only.
- (e) No claim is to be met by the Company under this warranty:
  - (i) which arises out of fair wear and tear;
  - (ii) which arises out of the transport of the Goods to the Purchaser;
  - (iii) which arise from the selection by the Purchaser of the Goods for suitability or fitness for the ordinary or any special use or purpose;
  - (iv) if the Goods have been incorrectly fitted or installed, overloaded, misused, damaged by dirt, subjected to any neglect or abnormal conditions or involved in any accident;
  - (v) if any attempt at repair, replacement or modification has been made by any person other than a duly authorised employee or service representative of the Company without the express sanction of the Company; or
  - (vi) if the Goods have in any way been dealt with contrary to any instructions or recommendations issued or given by the Company.

### 9.2 Warranty of the Company's Goods only

- (a) This warranty does not extend to Goods manufactured by any person other than the Company unless the defect results from incorrect assembly of the Goods by the Company.
- (b) The Company is under no liability for any loss or damage caused in any way by any such defective Goods.
- (c) So far as possible, the Company shall pass to the Purchaser the benefit of any manufacturer's or supplier's warranty relating to such Goods (but so that nothing requires the Company to commence any proceedings against any manufacturer or supplier of such Goods or to incur any material expense in connection with any claim by the Purchaser).

### 10.0 CONSEQUENTIAL DAMAGES

In no event is the Company liable for consequential, special, punitive or indirect damages. The Purchaser indemnifies the Company against any claim of whatever nature in connection with the Goods by any third party.

### 11.0 INTELLECTUAL AND INDUSTRIAL PROPERTY RIGHTS

#### 11.1 Purchaser not to alter trade marks

The Purchaser shall not alter, remove or in any way tamper with any of the trade or other marks or numbers of the Company attached to or placed upon the Goods.



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### 11.2 Legal actions regarding patents

- (a) If any claim is made or action brought or threatened in respect of any infringement of patents, trade marks, trade names, registered designs or any other industrial property rights in respect of the Goods, the Purchaser shall not make any admissions but shall immediately notify the Company of the claim.
- (b) The Company shall conduct all negotiations and take all proceedings the Company considers to dispute the claim or action in the Company's name and the name of the Purchaser.
- (c) The conduct of all proceedings and negotiations is completely in the discretion of the Company and the Purchaser shall execute such documents, do all things and render such assistance to the Company as the Company considers necessary for the Company to properly deal with the claim or action.

### 11.3 Export of Goods

The Purchaser must not export the goods from the jurisdiction into which they are Delivered without the express written consent of the Company.

### 12.0 REVERSE ENGINEERING

The Purchaser will not reverse engineer or otherwise attempt to copy the Goods.

### 13.0 MISCELLANEOUS

The Contract and the rights and duties of the parties shall be governed by the laws of the State of Western Australia.

### 14.0 DISPUTES

If any dispute shall arise in connection with the Contract which cannot be amicably settled between the Purchaser and the Company, either party may give written notice of the existence of such dispute and same shall be referred to the arbitration of a person to be mutually agreed upon, or failing agreement, of some person appointed by the President of the Institution of Engineers, Australia. The award of such arbitrator shall be final and finding.