

# Terms and Conditions of Sale

Complete Fire Doors Australia Pty Ltd ABN 26 132 077 224

## 1 Interpretation

In these terms:

- (a) **Buyer** means the person, company, firm or other entity whose details are set out on the face of this purchase order.
- (b) **Contract** means the contract between the Buyer and the Seller for the sale and purchase of Goods and includes these Terms and Credit Application
- (c) Credit Application means an application for credit received by the Seller from the Buyer in a form acceptable to the Seller and supported by a guarantee and indemnity.
- (d) **Goods** means the goods (including any instalment or part of the Goods, the packaging and labelling used in relation to the Goods and any point of sale or other publication which accompanies the Goods) set out in the Purchase Order [or otherwise purchased by the Buyer from the Seller.
- (e) **GST** has the meaning given to that term in the GST Law.
- (f) **GST Law** has the meaning given to that term in the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.
- (g) **Insolvency Event** means one or more of the following events
  - (i) an application is made, or a resolution is passed, to wind up the Buyer or a liquidator is appointed to the Buyer;
  - (ii) a controller, receiver or administrator is appointed in respect of the Buyer or any of its assets;
  - (iii) the Buyer commits any act of bankruptcy within the meaning of the *Bankruptcy Act 1966 (Cth)*; or
  - (iv) the Buyer dies, ceases to be of full legal capacity or becomes incapable of managing its own affairs for any reason.
- (h) **Payment Schedule** means a payment schedule issued by the Buyer accordance with clause 10(c).
- (i) **Seller** means Complete Fire Doors Australia Pty Ltd.
- (j) **Seller's Premises** means Unit 4, 17-37 Wollongong Road Arncliffe NSW or any other address the Seller notifies to the Buyer.
- (k) **Terms** means the Seller's standard terms and conditions of sale set out in this document, unless the context otherwise requires.

## 2 General

- (a) The Seller agrees to sell and the Buyer agrees to purchase the Goods in accordance with the terms and conditions of these Terms.
- (b) These Terms prevail over any inconsistent terms in any document of the Buyer.
- (c) If the Buyer places an order, accepts delivery of the Goods, makes any payment or performs any of these Terms, the Buyer is taken to have accepted these Terms.

## 3 Seller's quotations

- (a) A quotation is not an offer by the Seller. The Seller may withdraw or alter it without notice.
- (b) Unless the Seller withdraws it, a quotation is valid for the period stated in it, or if no period is stated, for 30 days after the date of the quotation.

## 4 Descriptions and specifications

- (a) All specifications, drawings, and particulars of weight and dimensions are approximate only. The Buyer cannot claim against the Seller for any deviation.
- (b) The descriptions, illustrations and material contained in any advertisement, catalogue, price list or brochure do not form any part of the Contract.

## **5 Delivery**

- (a) Any delivery time the Seller gives to the Buyer is only an estimate. The Seller is not liable to the Buyer for any loss or damage (including any consequential loss or damage) arising from late delivery of any Goods.
- (b) The Buyer must still accept and pay for the Goods even if the Seller delivers those goods late.
- (c) The Seller may deliver the Goods in instalments. Each instalment must be treated as a sale under a separate contract. If the Seller fails to deliver any instalment, the Buyer must still accept and pay for the remaining instalments. If the Buyer fails to pay for any instalment, the Seller may treat the default as a breach of contract relating to each other instalment.
- (d) The Seller may deliver the Goods at any time during working hours or outside of working hours if previously agreed with the Buyer. Delivery occurs when the Seller delivers the Goods to the Buyer's premises, even if the Buyer is not present at the premises. The Buyer agrees and acknowledges that the Seller's delivery docket shall be evidence of the delivery of the Goods and may only be altered if signed by both an authorised representative of the Buyer and the Seller.
- (e) If the Seller quotes delivery within a particular period that period begins on the date the Seller has received both the Buyer's written order and all information and drawings needed, in the Seller's opinion, so the Seller can commence the work and proceed without interruption.

## **6 Quantity discrepancy**

- (a) If the quantity of goods delivered is less than the amount the Buyer ordered, the Buyer must notify the Seller in writing of the shortfall within 7 days of delivery, otherwise the Seller will be deemed to have delivered the correct quantity of goods, and the Buyer must accept the goods and pay for them in full despite the shortfall.
- (b) If the quantity of Goods delivered is more than the amount the Buyer ordered, the Buyer must immediately inform the Seller in writing and the Seller is entitled to charge the Buyer for the excess or recover the excess from the Buyer at the cost of the Seller.

## **7 Storage**

If the Buyer does not collect the Goods, or provide adequate delivery instructions, within 10 days of request by the Seller, the Seller may charge for storage of those goods. The Buyer must pay charges monthly at commercial rates. The Goods are to be stored at the Buyer's risk.

## **8 Price and costs**

- (a) Unless the Seller otherwise agrees in writing and subject to any quotation given under clause 3, the price of the Goods will be the price the Seller usually charges for the Goods. Any price concession or discount the Seller provides to the Buyer is conditional on the Buyer's full compliance with these Terms.
- (b) Prices quoted are those ruling at the date of issue of quotation and are subject to adjustment (including a proportional adjustment for fixed costs and profit) for any variation in:
  - (i) the cost of labour, material or transport;
  - (ii) exchange rates, customs duty, freight or insurance;
  - (iii) suppliers' prices;
  - (iv) the amount of work required to produce the Goods due to a variation in specification approved by the parties; and
  - (v) any other charges affecting the cost of production.
- (c) If the Seller suspends work on any order due to the Buyer's instructions or lack of instructions, the Seller may increase the contract price to cover any extra expense or cost incurred (including a proportional adjustment for fixed costs and profit).

- (d) Any prices quoted apply only if all of the Goods included in the quotation are bought. If the Buyer orders part only, the Seller may submit a revised quotation.

## 9 GST on price

- (a) Unless otherwise stated, the price for the Goods is GST exclusive.
- (b) In addition to the price for the Goods, the Buyer must pay to the Seller an amount equal to any GST the Seller must pay for any supply by the Seller under these terms of sale or under any agreement for sale of Goods.
- (c) The Buyer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Buyer pays the price (or the corresponding first part of it if the Seller agrees to the Buyer paying the price by instalments).

## 10 Payment

- (a) Unless the Buyer has a credit account with the Seller pursuant to a Credit Application which has been accepted by the Seller, or as otherwise agreed in writing, the Buyer must pay for the Goods without deduction by way of set off, retention or otherwise in full in cash or by bank cheque before the Seller starts work on the Buyer's order.
- (b) Where the Buyer has a credit account with the Seller pursuant to a Credit Application which has been accepted by the Seller, then, at intervals of one month, or as otherwise notified by the Seller, the Seller will submit to the Buyer a payment claim setting out a breakdown of the Goods supplied in performance of this Contract during the period to which the claim relates.
- (c) Within 10 days of receiving a payment claim, the Buyer must issue to the Seller a Payment Schedule setting out the payment which, in the Buyer's opinion, should be made to the Seller and the calculation used to arrive at that amount, and, reasons for any difference (if any) between that amount and the amount claimed for payment by the Seller.
- (d) If the Buyer fails to issue a Payment Schedule in accordance with clause 10(c), the full amount of the payment claim will become due and payable immediately.
- (e) Save as provided in clauses 10(a) and 10(d) above, the Buyer must pay the amount specified in the Payment Schedule within 14 days of the date of the payment claim without any or further deduction by way of set off, retention or otherwise.
- (f) The Seller may require immediate payment of all amounts outstanding (whether or not then due and payable):
- (i) if the Buyer does not comply with any one or more of its obligations under these terms;
  - (ii) if the Seller considers that the creditworthiness of the Buyer has become unsatisfactory; or
  - (iii) if one or more Insolvency Events occur in relation to a Buyer.
- (g) Time is of the essence in respect of payment of invoices.
- (h) It is a condition precedent to the undertaking of any tagging or certification of the Goods that payment in full has been received.
- (i) It is a condition precedent to the Seller considering any query in relation to an invoice that the query is raised within 14 days of the date of the relevant invoice.
- (j) The Seller may suspend performance of any of the services provided under this Contract if any invoice remains unpaid in whole or in part 60 days after the invoice date.

## 11 Default

- (a) If the Buyer defaults in the payment of any money which is due and payable under the Contract then:
- (i) the Buyer must pay the Seller:
    - (A) interest at the rate equivalent to two percent (2%) higher than the rate for the time being fixed under Section 2 of the *Penalty Interest Rates Act 1983* (NSW) on any amounts owing to it under the Contract; and
    - (B) all expenses including, without limitation, legal expenses, and all debt collection agency costs incurred by the Seller in enforcing the Seller's rights under these Terms, or any Credit Application;

- (ii) the Seller may serve a notice stating that, unless the default is remedied, all money owing under the Contract which is not yet due for payment is now due. If the notice is not complied with within 5 days then that money becomes immediately due and payable;
- (iii) the Seller may cancel the Contract.
- (iv) The Seller may stop work on all of the Buyer's orders and hold all the Buyer's work until payment is made. If the Buyer continues to default in making payment, the Seller may close the Buyer's credit account (if any).
- (b) If the Seller ends the Contract in accordance with this clause 11, the Seller may, without prejudice to any other right or remedy available to the Seller suspend any further deliveries of the Goods to the Buyer and sell or otherwise dispose of the Goods and apply the proceeds of the sale to the overdue amount.

## 12 Risk

- (a) Risk in the Goods passes to the Buyer when delivery occurs pursuant to clause 5 or when the Goods are in the Buyer's custody, whichever is first.
- (b) The Buyer must take out and pay for insurance in both the names of the Buyer and Seller sufficient to cover both their interests in the Goods. The Buyer must produce a certificate of insurance to show that the Buyer has taken out this insurance if so requested by the Seller.
- (c) The Seller is not liable for any loss or damage or deterioration of the Goods after dispatch from the Seller's Premises even if transport is arranged by the Seller.

## 13 Intellectual property rights

- (a) The Buyer warrants that any design or instruction given to the Seller will not infringe any third party rights. The Buyer warrants that by completing the order for the Goods the Seller will not infringe any intellectual property of a third party (such as a patent, registered design, trademark or copyright or confidentiality rights). The Buyer indemnifies the Seller against any infringement or alleged infringement or unauthorised use of intellectual property (such as a patent, trademark, registered design or copyright or confidential information) from the manufacture or use of the Goods.
- (b) Copies of documents such as drawings, plans and specifications which the Seller submits to the Buyer remain the property of the Seller. The Buyer must treat the information contained in those documents as strictly confidential. The Buyer must use the information only to install or operate the Goods. The Buyer must not use the information in any other way to the advantage of the Buyer or the detriment of the Seller. By buying the Goods the Buyer does not gain any licence or right under any of the Seller's intellectual property such as a patent, registered design, trademark or copyright or confidential information. The Seller is not obliged to disclose the methods or techniques used in production of the Goods.

## 14 Reservation of Title

- a. Title and property in all Goods sold to the Buyer by the Seller shall remain the property of the Seller until such time as the terms of the Contract are fulfilled and all payment obligations owed by the Buyer to the Seller have been discharged in full.
- b. Until such time as title in the Goods has passed to the Buyer in accordance with clause [14(a)]:
  - i. the Buyer holds the Goods on a fiduciary basis as the Seller's bailee;
  - ii. the Buyer must store the Goods separately from property belonging to the Buyer or any third parties and must clearly identify the Goods as the Seller's Goods;
  - iii. the Buyer must maintain the Goods in satisfactory condition and keep them insured against all risks for their full value from the date of delivery;
  - iv. the Goods will not in any event become fixtures of the properties within which they are located, regardless of any annexation of the Goods (or any part of them) to any walls, floors or other parts of those properties;
  - v. the Buyer must provide such information to the Seller relating to the Goods as the Seller may require from time to time;
  - vi. if the Buyer sells, uses or disposes of the Goods in the ordinary course of its business while they remain the property of the Seller, then it does so as agent and fiduciary of the Seller and the Buyer holds the proceeds of any sale, use or disposal of the Goods on trust for the Seller up to the amount it owes to the Seller in respect of those Goods and must immediately pay those proceeds of sale to the Seller.

- c. The Buyer hereby irrevocably grants to the Seller, its agents and servants, an unrestricted right and licence to enter premises occupied by the Buyer, or any location where the Goods are located without notice to inspect, identify and/or remove or repossess any of the Goods to which the Seller is entitled.
- d. If, before title to the Goods has passed to the Buyer in accordance with clause [14(a)], the Buyer becomes subject to any Insolvency Event or if the Seller reasonably believes that the Buyer will imminently become subject to any Insolvency Event then without limiting any other right or remedy which the Seller may have, the Seller may revoke the Buyer's right to re-sell, deal or otherwise dispose of the Goods and may require the Buyer to deliver up the Goods and if the Buyer fails to do so promptly, then the Seller may enter any premises of the Buyer or of any third party where the Goods are located in order to recover them.
- e. If, when making payments to the Seller in respect of Goods, the Buyer does not specify which Goods each payment relates to, then the payments will be applied first to Goods which are no longer in the Buyer's possession, and second to whatever Goods are still in the Buyer's possession, at the Seller's absolute discretion.

## 15 Personal Property and Securities Act

- a. In this clause, additional capitalised terms have the meanings given to them in the *Personal Property and Securities Act 2009* (Cth) (**PPSA**).
- b. The Buyer acknowledges and agrees that:
  - i. these Terms evidence a Security Agreement;
  - ii. whenever Goods are supplied by the Seller to the Buyer, a Security Interest exists in the Goods in favour of the Seller;
  - iii. any Security Interest created under clause [ ] of these Terms is a Purchase Money Security Interest (**PMSI**) in respect of the Goods;
  - iv. the Goods are Collateral and are at all times subject to the Seller's Security Interest to secure their own purchase price;
  - v. to the extent permitted under the PPSA, and without limiting what other amounts may be secured, all Collateral (including the Goods) which is at any time subject to the Seller's Security Interest, secures the purchase price of all Collateral supplied to the Buyer by the Seller;
  - vi. the Seller may apply to register a Security Interest (including a Purchase Money Security Interest) in the Goods on the Personal Property Securities Register at any time before or after delivery of the Goods to the Buyer.
- c. The Buyer must do anything including signing documents or obtaining consents, which the Seller requires to ensure the Seller's Security Interests are enforceable and perfected under the PPSA and to enable the Seller to gain first priority in respect of the Goods and any other Collateral. The Buyer gives the Seller an irrevocable power of attorney to do anything that the Seller considers that the Buyer should do under this clause.
- d. To the extent permitted by the PPSA, the provisions listed in section 115 of the PPSA are contracted out of by these Terms to the extent that they require or restrain action by the Seller.
- e. The Buyer waives its right under section 157 of the PPSA to receive notice of any verification of the registration of any Security Interests (including any Purchase Money Security Interests).
- f. If the Buyer defaults under these Terms or any other agreement for the Seller to supply Goods to the Buyer, the Seller may enforce its Security Interest (including a Purchase Money Security Interest). To the maximum extent permitted by law, the parties agree that the following provisions of the PPSA do not apply to the enforcement by the Seller of its Security Interest in the Goods: sections 95, 118, 121(4), 125, 130, 132(3)(d), 132(4), 135, 142 and 143.
- g. The parties agree not to disclose information of the kind mentioned in s275(1) of the PPSA, except in circumstances required by sections 275(7)(b)-(e) of the PPSA.
- h. The Buyer must promptly do anything required by the Seller to ensure that the Seller's Security Interest is a perfected Security Interest and has priority over all other Security Interests against the Buyer.
- i. The Buyer will not enter into any Security Agreement that permits any other person to have or to register any Security Interest in respect of the Goods until the Seller has perfected its Security Interest including registration of that Security Interest or registration of that Security Interest as a Purchase Money Security Interest on the Personal Property Securities Register.

## 16 Force majeure

- (a) The Seller is not liable for failure to comply with these Terms, any Contract or an agreement for sale of Goods if the failure (directly or indirectly) arises out of any circumstances which are not within the Seller's reasonable control. If such circumstances occur, the Seller may delay or cancel delivery of the Goods or reduce the quantity of the Goods to be delivered.
- (b) The circumstances which are taken to be beyond the Seller's reasonable control includes, without limitation, strikes, lock-outs, accidents, war, fire, flood, explosion, shortage of power, breakdown of plant or machinery, shortage of raw materials from normal source of supply, act of God or any order or direction of any local, state or federal government, government authority or instrumentality.
- (c) The Seller is not obliged to remedy such circumstances. The Seller is especially not obliged to settle any strike, lock-out or any other kind of labour dispute.

## 17 Cancellation

### 17.1 Cancellation of order or return of Goods

- (a) The Buyer may not cancel an order or return any Goods unless the Seller first agrees in writing.
- (b) The Seller will not agree to cancellation or an order unless the Buyer compensates the Seller for all loss and damage arising from the cancellation.
- (c) The Seller may cancel any order in whole or in part by notice to the Buyer and resell the Goods if the Buyer fails to comply with any of its obligations under these Terms or under any other agreement between the Buyer and the Seller.
- (d) The Seller may cancel any order in whole or in part by notice to the Buyer and resell the Goods if one or more Insolvency Events occur.
- (e) Upon cancellation or an order the Buyer must indemnify the Seller for any costs and expenses incurred prior to cancellation and must pay any reasonable cancellation charges fixed by the Seller.

### 17.2 Cancellation of Contract

The Seller may cancel the Contract if:

- (a) the Seller reasonably considers that it may be unable to satisfy the order within a reasonable time; or
- (b) Goods remain uncollected or the Buyer fails to give satisfactory instructions for the dispatch of the Goods after a period of 14 days from notification to the Buyer that they are ready for collection; or
- (c) an Insolvency Event occurs

### 17.3 No claim

The Buyer has no claim against the Seller for any damage, loss, cost or expense arising from cancellation of the Contract by the Seller under this clause or otherwise.

## 18 Limitation of liability and indemnity

- (a) The only conditions and warranties which are binding on the Seller in respect of:
  - (i) information, advice, recommendations or services supplied to the Buyer in relation to the Goods; or
  - (ii) the suitability, use, quality or condition of the Goods or services,

are those applying by operation of law and required to be binding (including the *Trade Practices Act 1974*). All other warranties and conditions are excluded.

- (b) To the extent permitted by law, the liability of the Seller and its employees or agents for a breach of any warranty or liability which by law cannot be excluded, restricted or modified, or under any express warranty, is limited, at the Seller's option, to:

- (i) in the case of goods:
  - (A) the replacement of the goods or the supply of equivalent goods;
  - (B) the repair of the goods;
  - (C) the payment of the costs of replacing the goods or of acquiring equivalent goods; or
  - (D) the payment of the cost of having the goods repaired; and
- (ii) in the case of services:
  - (A) the supplying of the services again; or
  - (B) the payment of the cost of having the services supplied again.
- (c) Other than as provided in this clause 18, the Seller, its employees or agents shall not be liable for any loss or damage (including any consequential loss or damage) of any kind whatever, even if due to the negligence of the Seller, its employees or agents.
- (d) The Buyer acknowledges that the Buyer does not rely on the skill or judgment of the Seller as to whether or not the Goods are fit for any particular purpose and that the sale of the Goods is not a sale by sample.
- (e) The Buyer indemnifies the Seller from every liability, loss, damage, cost or expense directly or indirectly incurred or suffered by the Seller caused by or contributed to by any of the following:
  - (i) the Seller complying with any instruction of the Buyer about the Goods;
  - (ii) the Buyer's failure to:
    - (A) adequately provide or display safety markings or safety information on or with the Goods;
    - (B) comply with any law about the Goods or their use (for example, their sale, marketing, labelling or marking);
    - (C) take any reasonable precaution to bring to the attention of any potential users of the Goods any dangers associated with Goods;
    - (D) take any reasonable precaution to detect any matters in relation to which the Seller may become liable in any way (for example, under Part VA of the *Trade Practices Act 1974 (Cth)*);
    - (E) follow the Seller's instruction about the recommended manner for installing, storing or otherwise handling the Goods, as stated in the Seller's document called "General Client Obligations" which is available on request from the Seller and on its website at [www.completefiredoorspecialists.com.au](http://www.completefiredoorspecialists.com.au) and as amended by the Seller from time to time without notice.
  - (iii) the Buyer making any statement about the Goods (for example, about their performance or characteristics) without the Seller's approval;
  - (iv) the use or operation of the Goods by the Buyer; and
  - (v) any negligence or breach of duty by the Buyer or any breach by the Buyer of these terms.

## 19 Notices

- (a) A notice, consent or other communication under these terms of sale is only effective if it is in writing, signed and either left at the addressee's address or sent to the addressee by mail or email. If it is sent by mail, it is taken to have been received 3 working days after it is posted. If it is sent by email, it is taken to have been received when the addressee actually receives it in full and in legible form.
- (b) A person's address and email address are those set out in the quotation. The Seller may send a notice to the Buyer's last known address.

## 20 Governing law and jurisdiction

- (c) These terms of sale are governed by the law in force in the State of New South Wales.

- (d) Each party submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in State of New South Wales, and any court that may hear appeals from any of those courts, for any proceedings in connection with these terms, and waives any right it might have to claim that those courts are an inconvenient forum.

## **21 Waiver**

- (a) A right of the Seller may only be waived in writing, signed by the Seller.
- (b) No other conduct of the Seller (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right.
- (c) A waiver of a right by the Seller on one or more occasions does not operate as a waiver of that right if it arises again.
- (d) The exercise of a right by the Seller does not prevent any further exercise of that right or of any other right.

## **22 GST on claims**

- (e) If a payment to satisfy a claim or a right to claim under or in connection with these terms (for example, for misleading or deceptive conduct or for misrepresentation or for a breach of any warranty or for indemnity or for reimbursement of any expense) gives rise to a liability to pay GST, the payer must pay, and indemnify the payee on demand against the amount of that GST.
- (f) If a party has a claim under or in connection with these terms for a cost on which that party must pay GST, the claim is for the cost plus all GST (except any GST for which that party is entitled to an input tax credit).
- (g) If a party has a claim under or in connection with these terms whose amount depends on actual or estimated revenue or which is for a loss of revenue, revenue must be calculated without including any amount received or receivable as reimbursement for GST (whether that amount is separate or included as part of a larger amount).

## **23 The Seller's rights**

Any right that the Seller may have under these terms of sale is in addition to, and does not replace or limit, any other right that the Seller may have.

## **24 Severability**

Any provision of these terms which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make these terms enforceable, unless this would materially change the intended effect of the terms.

## **25 Variation**

The Seller is entitled to vary these Terms at any time by publishing them on its website at [www.completefiredoorspecialists.com.au](http://www.completefiredoorspecialists.com.au)