

## Terms and Conditions of Sale

### **Interpretation: In these terms and conditions;**

'Delivery Point' means the address, agreed by the Seller, to which the Goods are to be delivered or any other address notified by the Purchaser to the Seller on the order raised by the Purchaser;

'Goods' means goods or products and, if any, services as specified on the order to the Seller raised by the Purchaser;

'Purchaser' means the entity whose name or trading name is specified on the order received by the Seller, and which is the purchaser of the goods whether directly or indirectly through an agent or factor who is acting for or instructed by any person, firm or company or whose actions are subsequently to the contract ratified by the actual purchaser; which may be any 'Sole Trader or Partnership or Company or Trust;

'Seller' means Doorcraft Pty Ltd, trading on behalf of Horseford Industries Pty Ltd, ABN 96 614 583 274;

'Sellers Premises' means the address from where the goods are to be dispatched to the Purchaser, or such other address as is notified by the Seller to the Purchaser;

the singular includes the plural and vice versa;

a reference to an individual includes a corporation, partnership, joint venture, association, authority, trust, state or government and vice versa.

### **Governing Terms and Conditions**

These terms and conditions apply to the sale of goods by the Seller to the Purchaser. These terms and conditions prevail over any terms in the Purchaser's documents and represent the entire agreement between the Seller and the Purchaser about its subject matter, unless otherwise expressly agreed in writing by the Seller.

When the Purchaser places an order for goods with the Seller, accepts delivery of goods, makes any payment or complies with these terms and conditions the Purchaser is taken to have accepted these terms and conditions.

### **Seller's Quotations**

Quotations are only valid if in writing on official stationery of the Seller.

Unless previously withdrawn, quotations are valid for the period stated, or when no period is stated, for thirty (30) days after the date of the quotation.

### **Descriptions & Specifications**

All specifications, drawings and particulars of weight and dimensions are approximate only and any deviation shall not be taken to vitiate any Contract with the Seller or form the grounds for any claim against the Seller.

### **Delivery**

Delivery dates and times made known to the Purchaser are estimates only. The Seller shall not be liable to the Purchaser for any loss or damage (including any consequential loss or damage) arising from late delivery.

The Purchaser shall not be relieved of any obligation to accept or pay for the goods by reason of late delivery.

The Seller reserves the right to deliver by instalments and each instalment shall be deemed to be sold under a separate contract. Failure of the Seller to deliver any instalment shall not entitle the Purchaser to cancel the balance of the order. If the Purchaser defaults in payment on any instalment, the Seller may elect to treat the default as a breach of contract relating to each other instalment.

### **Performance**

Any performance figures given by the Seller are estimates only. The Seller shall not be liable to the Purchaser for any loss or damage for failure to attain such figures unless specifically guaranteed in writing. Any such guarantee shall be subject to the recognised tolerances applicable to such figures.

The Purchaser assumes responsibility for the capacity and performance of goods and materials specified by it being sufficient and suitable for its purpose.

### **Prices**

Unless otherwise stated, all prices quoted by the Seller are exclusive of GST.

Unless otherwise stated, all prices quoted are ex works. An additional charge will be included if the Purchaser requires the Seller to arrange transport to a delivery point.

Prices quoted are those ruling at the date of issue of quotation and are subject to adjustment by reason of:

any variation in exchange rates, customs duty, freight, insurance, shipping expenses and cartage;

any variation in the amount of work or type of materials required to produce the goods due to a variation in specification approved by the parties;

the goods being delivered to premises other than the delivery point originally specified in the order raised by the Purchaser.

Any prices quoted apply only if all of the goods included in the quotation are purchased. Should the Purchaser require part only, the Seller reserves the right to submit a revised quotation.

### **Payment**

Payment of all monies due on Account, are required to be made by the Purchaser to the Seller's business address at 44 Bassendean Road Bayswater WA 6053 or by electronic funds transfer directly to the Seller's nominated bank account.

It is understood by the Purchaser that, all amounts due for payment will be paid to the Seller on 30-day terms from end of invoice month.

### **Interest**

Interest charged at the rate of 1.5% per month (calculated on daily balances) may be applied to all overdue balances.

### **Costs**

The Purchaser will pay to the Seller all collection expenses, legal and other costs on an indemnity basis and outlays incurred as a result of

1. the failure by the Purchaser to pay their account by the due date or 2. due to any breach of the Seller's terms and conditions of sale.

### **Retention of Title**

Property and title to the goods will not pass to the Purchaser until those goods and all other amounts owed to the Seller by the Purchaser have been paid for in full and until then:

The Purchaser will hold the goods as a fiduciary and bailee for the Seller;

The goods must be stored separately and in a manner enabling them to be identified as goods of the Seller and cross-referenced to particular invoices and the Purchaser acknowledges that if it should process or mix the goods with other products or items such that the goods are no longer separately identifiable then the Purchaser and Seller will be owners in common of the new product;

The Purchaser may sell the goods in the ordinary course of its business as bailee for the Seller and will hold the proceeds of sale in a separate account on trust for the Seller and account to the Seller for those proceeds; and

The Seller may require the Purchaser to return the goods to it on demand and may enter upon the premises of the Purchaser to inspect or repossess the goods.

Despite clause 17.1 the Seller will be entitled to maintain an action against the Purchaser for the purchase price of the goods.

### **Returns and Claims related to delivery**

Returned goods will only be accepted for credit by the Seller if returned for credit by the Purchaser within 14 days from the date of the relevant invoice.

Returned goods, if accepted by the Seller, may attract a restocking fee on the goods returned by the Purchaser.

Claims related to delivery including but not limited to short delivery and damaged goods must be received in writing within 2 days of delivery for consideration.

### **Lien**

**HORSEFORD INDUSTRIES PTY LTD TRADING AS DOORCRAFT**

**ABN 96 614 583 274**

**44 BASSENDEAN ROAD BAYSWATER WA 6053**

**P: 9271 7944 F: 9272 1579 E: info@doorcraftaustralia.com.au**

The Seller shall have a General Lien in respect of all sums due from the Purchaser upon all goods to be supplied to the Purchaser or upon which work has been done or is being done on the customer's behalf and, if the Purchaser is in breach of the agreed terms and conditions, upon expiry of seven (7) days written notice to the Purchaser, the Seller may sell such goods by auction or private treaty and apply the proceeds towards the satisfaction of any sums due to the Seller, including all costs incurred in exercising the Lien and right of sale, including storage and selling costs.

**Applicable Law**

This contract shall be subject to and interpreted in accordance with the laws in the State of Western Australia. In the event that legal proceedings are commenced, the parties agree to these proceedings being heard in a court of competent jurisdiction in the locality in which the head office of the Seller conducts its business.

**Cancellation**

No order may be cancelled except with the consent in writing of the Seller and on terms which indemnify the Seller against losses arising from the cancellation. The Seller reserves the right to cancel any order in whole or in part and resell the goods by notice to the Purchaser upon the happening of any one or more of the following events:

an order is made, or an effective resolution is passed for the winding up of the Purchaser;  
any person appoints a receiver or receiver and manager over the whole or any part of the undertakings or assets of the Purchaser;  
the Purchaser enters any arrangement or composition with any of its creditors;  
the Purchaser is placed under administration;  
the Purchaser is unable to pay its debts as they fall due or otherwise commits any act of bankruptcy within the meaning of the Bankruptcy Act;  
the Purchaser fails to comply with any of its obligations under these conditions of sale;

In the event of cancellation, the Purchaser shall be liable to indemnify the Seller for any costs and expenses incurred prior to cancellation and for reasonable cancellation charges to be fixed by the seller and shall have no claim against the Seller for any damages, loss, costs or expenses whatsoever.

**Products and Services**

It is the Purchaser's responsibility to furnish the Seller with clear written instructions as to the product specifications, including but not limited to, material, colour, size, weights etc., together with clearances required. Failure on the part of the Purchaser to furnish this information will absolve the Seller from any responsibility whatsoever for rectification to products and the costs of any such rectification shall be payable by the Purchaser. The Purchaser warrants that the information provided is correct and the Seller will not be held responsible for relying on the information provided by the Purchaser. Any period specified for delivery will not start to run until this information is received.

Unless otherwise stated, in the Seller's quotation, supply is for the provision of goods only and excludes any engineering design and calculations, foundations, installation and maintenance services and ancillary items, including but not limited to attachments, vents, fixings, furnishings etc.

Unless otherwise stated in the Seller's quotation, goods will not be supplied assembled or with ancillary items or fittings attached.

The Seller does not warrant the suitability or adequacy of Goods ordered by the Purchaser unless otherwise agreed in writing.

**Site Conditions**

All quotes are given on the basis that the site conditions are suitable for a full delivery truck to be driven to and located adjacent to any site position;

**Force Majeure**

The Seller shall be entitled to delay or cancel delivery or to reduce the amount delivered if it is prevented from or hindered in, or delayed in manufacturing, obtaining or delivering the goods by normal route or means or delivery through any circumstances beyond its reasonable control, including, but not limited to, strikes, lock-outs, accidents, war, fire, flood, explosion, reduction in or unavailability of power at manufacturing plant, breakdown of plant or machinery, shortage or unavailability 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.

**Waiver**

Failure by the Seller to insist upon strict performance of any term, warranty or condition of these conditions of sale shall not be deemed a waiver of any rights the Seller may have, and no express waiver shall be deemed a waiver of any subsequent breach of any term, warranty or condition.

**Notices**

Any notices required or authorised to be given or served upon a party pursuant to these conditions of sale shall be in writing and shall be delivered personally or sent by email, facsimile or post to the relevant party at its address as appearing in the quotation (in the case of the Seller) or in the Purchaser's order or last known address.

**Severability**

Any provision in this agreement which is invalid or unenforceable in any jurisdiction is to be read down for the purpose of the jurisdiction, if possible, so as to be valid and enforceable as is otherwise capable of being severed to the extent of the invalidity or unenforceability, without affecting the remaining provisions of this agreement or affecting the validity or enforceability of that provision in any other jurisdiction.

**Seller's Rights**

The rights and remedies of the Seller under these conditions of sale shall be in addition to, and shall not derogate from any other rights or remedies to which it may be entitled.

**Limitation of Liability and Indemnity**

All warranties, conditions, liabilities or representations as to the quality or fitness of the goods or the correctness of information, advice or other services concerning the goods or otherwise (other than any rights which by law cannot be excluded, restricted or modified) are expressly excluded.

To the fullest extent permitted by law, the liability of the Seller, its directors, employees or agents for breach of any of the non-excludable rights referred to in clause 34.1 or any express warranty is limited at the Seller's option to:

In the case of goods, any one or more of the following:

the replacement of the goods or the supply of equivalent goods;  
the repair of the goods;  
the payment of the costs of replacing the goods or of acquiring equivalent goods; or  
the payment of the cost of having the goods repaired; and

In the case of services:

the supplying of the services again; or  
the payment of the cost of having the services supplied again.

The Seller shall not be liable for any loss or damage (including any consequential loss or damage) of any kind howsoever arising even if due to the negligence of the Seller, its directors, employees or agents.

The Purchaser indemnifies the Seller from and holds it harmless against all liabilities, losses, damages, costs or expenses directly or indirectly incurred or suffered by the Seller as a result of compliance or adherence by the Seller with any instructions of the Purchaser. In relation to the goods and from and against all actions, proceedings, claim or demands made against the Seller as a result of such compliance or adherence.

**Risk**

Risk in the goods shall pass to the Purchaser when property in the goods passes to the Purchaser or when goods are despatched from the Seller's premises or when delivery is effected or deemed to have been effected under clause 5.1, 5.2, 5.3 or 9, whichever shall occur first.

The Seller shall not be liable for any loss or deterioration of, or damage to, the goods from the time when the goods are put on the vehicle of a Carrier notwithstanding that freight may be arranged or the carrier engaged by the seller.

The Purchaser must effect and maintain adequate insurance of the goods in the name of the Purchaser and the Seller for their respective rights and interests.

**Charging Clause**

To secure payment of all monies which are or may become payable by the Purchaser to the Seller under this Agreement the Purchaser hereby charges with the due payment of all of those monies all of the Purchaser's interest in real property wherever located both present and future and the Purchaser consents to the Seller lodging a caveat or caveats over such property to protect its interest.

Upon demand by the Seller, the Purchaser agrees to immediately execute a mortgage or other instrument in terms satisfactory to the Seller to further secure the Purchaser's indebtedness to the Seller.

Should the Purchaser fail within a reasonable time of such demand to execute such mortgage or other instrument then the Purchaser appoints irrevocably the credit manager or a duly authorised officer of the Seller to be the Purchaser's lawful attorney to execute any such mortgage or other instrument.

#### **Personal Properties Security Act (2009)**

You acknowledge that the Agreement constitutes a security agreement for the purposes of section 20 of the Personal Property Securities Act 2009 ("PPSA") and that a security interest exists in all Goods (and their proceeds) previously supplied by us to you (if any) and in all future Goods (and their proceeds).

You will execute documents and do such further acts as may be required by us to register the security interest granted to us under the Agreement under the PPSA.

Until ownership of the Goods passes, you waive your rights under the following provisions of Part 4 of the PPSA:

- to receive a notice of intention of removal of an accession (section 95);
- to receive a notice that we decide to enforce our security interest in accordance with land law (section 118);
- to receive a notice of enforcement action against liquid assets (section 121(4));
- our obligation to dispose of or retain collateral (section 125);
- to receive a notice of disposal of goods by us purchasing the Goods (section 129);
- to receive a notice to dispose of Goods (section 130);
- to receive a statement of account following disposal of Goods (section 132(2));
- to receive a statement of account if no disposal of Goods for each 6-month period (section 132(4));
- to receive notice of any proposal of ours to retain Goods (section 135(2));
- to object to any proposal of ours to either retain or dispose of Goods (section 137(2));
- to redeem the Goods (section 142);
- to reinstate the security agreement (section 143);
- to receive a notice of any verification statement (section 157(1) and section 157(3));

You further agree that where we have rights in addition to those under Part 4 of the PPSA, those rights will continue to apply.

Until ownership of the Goods passes, you must not give to us a written demand or allow any other person to give us a written demand requiring us to register a financing change statement under the PPSA or enter into or allow any other person to enter into the register of personal property securities a financing change statement under the PPSA.

You acknowledge that you have received value as at the date of first delivery of the Goods and have not agreed to postpone the time for attachment of the security interest (as defined in the PPSA) granted to us under these Terms and Conditions.

You irrevocably grant to us the right to enter upon your property or premises, without notice, and without being in any way liable to you or to any third party, if we have cause to exercise any of our rights under sections 123 and/or 128 of the PPSA, and you shall indemnify us from any claims made by any third party as a result of such exercise.

#### **Credit Limit**

Any credit limit is solely for the benefit of Seller.

The obligations of the Purchaser under this Agreement remain unchanged if the credit limit is exceeded or not specified at any time.

#### **Consent**

The Purchaser and its guarantors, if any, understands that the personal information given herein is to be used by the Seller for the purposes of assessing the Purchaser's credit worthiness. The Purchaser and its guarantors, if any, confirms that the information given by the Purchaser is accurate and complete.

Furthermore, the Purchaser and its guarantors, if any, agrees to provide updated information, as and when further information is requested by the Seller for the purpose of reviewing the credit history of the account, updating the Seller's credit file on the Purchaser and its guarantors, if any, and/or reviewing credit limits. The Purchaser and its guarantors, if any, agrees that information given in confidence to the Seller by a third party concerning the Purchaser and its guarantors, if any, will not be disclosed to the Purchaser or its guarantors, if any.

The Purchaser and its guarantors, if any, hereby consents to and authorises the Seller at all times to furnish personal and credit information concerning the dealings between the Purchaser, its guarantors, if any, and the Seller, to a credit bureau and to any third party seeking a trade reference regarding the Purchaser in its dealings with the Seller.

#### **General**

This contract contains the entire agreement between the parties and any other terms, whether express or implied, are excluded here from and any variations, cancellations or additions to this contract shall not be of any force or effect unless expressly agreed to in writing and signed by the parties or their duly authorised signatories. Accordingly, the terms and conditions of this Credit Application Form, in its entirety, shall not be capable of being altered, amended or modified in any respect whatsoever unless signed by an authorised officer of the Seller and by an authorised officer of the Purchaser (as well as any guarantors). No prior correspondence, discussion or other terms and conditions form part of this contract unless stated in this contract.

The signatories to this credit application form certify that they are authorised to sign this application on behalf of the Purchaser and acknowledgement and affirm that they have read these terms and conditions and fully understand and comprehend the terms and conditions and certify the information supplied as the basis of the Seller's decision to grant credit is true and correct.

The purchaser agrees to any amendments to this contract that may occur. The seller is not required to advise the purchaser of any amendments. The seller is required to provide a copy of the current terms and conditions on the company's website for the purchaser to review.