

ASA FLEXIBLE DOORS PTY LTD

ABN 79 096 908 100

STANDARD TERMS AND CONDITIONS

1. General

These terms and conditions of sale shall apply to the exclusion of all others, including any terms and conditions of customer (whether on customer's order form or otherwise).

No goods will be supplied by ASA FLEXIBLE DOORS PTY LTD ABN 79 096 908 100 (hereinafter referred to as "the Company") on any terms or conditions other than those set out herein and by taking delivery of goods, customer shall be deemed to agree that these terms and conditions shall apply to the exclusion of all others.

2. Payment

(A) (i) Payment terms are NETT cash by the last working day of the month after the month of invoice.

(ii) Payment terms for Rapid Roll Doors are 25% of total amount at acceptance of Quotation, 50% at completion of the commissioning of the door and the final payment within thirty (30) days from date of invoice.

(B) Without limitation upon the Company's other legal rights and remedies, interest may be charged from the due date to all overdue accounts on a monthly basis at the rate equal to the Company's current overdraft rate which may vary from time to time such interest to be calculated daily from the date on which payment was due to the date of payment. Any payment by the customer will be credited first against the interest accrued.

(C) The Customer hereby waives any cross-claim against any payment due.

3. Retention of Title

(A) All goods supplied to the customer shall thereby be sold to the customer but full legal and equitable title in all goods sold shall remain vested in the Company until the Company has received payment in full from the customer of all amounts owing from the customer to the Company from time to time.

(B) The customer shall have the right to sell goods in which title remain vested in the Company in the ordinary course of trade.

(C) Goods supplied by the Company to the customer in which title has not passed to the customer shall be held by the customer as a fiduciary bailee of the Company. Until the goods have been paid for by the customer in full or sold, the customer shall store such goods so that the same are identifiable as the property of the Company and are not commingled with the other property of the customer or a third party.

(D) The Company shall have the right to repossess at any time in respect of which payment is overdue, and to enter the premises of the customer for such a purpose without liability and without prejudice to the pursuit of any other legal remedy available to the Company.

4. Price

Unless agreed by the Company in writing to the contrary, price payable for goods supplied to the customer is the Company's current price for such goods at the date of delivery. Any and all freight rates, import duties, exchange rates, GST or any other tax, impost duty or levy included in price of goods are based on ruling rates as at the date of quotation. Any and all variations thereto prior to delivery shall be to account of the customer and the Company may vary the price accordingly.

5. Delivery and Shipment

(A) Unless otherwise agreed, the goods shall be transported by the Company's preferred carriers, representatives or agents.

(B) If at the customer's request the goods are transported by means other than as stated in sub-paragraph 7 (A), such transport will be to the customer's cost and risk.

(C) Subject to the Company's rights of stoppage in transit, risk in the goods shall pass to the customer on delivery.

(D) If a delivery date is specified, the Company will endeavour to deliver within the time so specified but in no circumstances will the Company be liable for any loss or damage of any kind whatsoever caused directly or indirectly by any delay in or failure of delivery.

(E) The Company reserves the right to suspend or cancel deliveries to any customer without notice where the customer's account has exceeded the due date for payment and/or the customer's credit account limit.

(F) If a contract is entered into for the delivery by instalments, the cancellation of any instalment shall not affect the remainder of the contract, each instalment being deemed to be a separate contract except in the case of cancellation for failure on the customer's part to pay for goods delivered in which case the Company shall have the right to suspend or cancel deliveries or to treat such failure as a repudiation of the contract by the customer and to terminate the contract as herein provided.

6. Description and Specification

(A) Whilst every effort is made to ensure accuracy the description, illustrations and material contained in any catalogues, price lists, brochures, leaflets or other descriptive matter represent the general nature of the items described therein but do not form part of any order or contract or amount to any representation or warranty. The Company reserves the right to modify the design of goods without notice.

(B) The customer warrants that any of the goods manufactured, constructed or supplied by the Company which are based upon designs, drawings or specification supplied to the Company by or on behalf of the customer shall not infringe any letters patent, registered designs or any other intellectual property rights. The customer shall indemnify and keep indemnified the Company, its servants and agents against any action, loss, costs, claim or damage that may be brought against or suffered by the Company, its servants or agents for any breach of this warranty.

(C) The Company does not warrant or guarantee and it shall not be a term of any agreement between the Company and the customer that any goods manufactured, constructed or supplied by the Company which are based in whole or in part upon any designs, drawings or specification supplied to the Company by or on behalf of the customer will achieve any standard of performance or any capacity whatsoever.

7. Claims

(A) The customer will be deemed to have accepted goods as being in accordance with its order unless it notifies the Company in writing within seven (7) days of receipt of goods to the contrary.

Where goods are returned due to client error, we reserve the right to charge a re-stocking fee of 5% (Minimum fee \$50.00)

(B) Where goods supplied by the Company are proved to the reasonable satisfaction of the Company to be defective through faulty materials or workmanship and where such goods are returned to the Company within fourteen (14) days of receipt thereof by the customer, the Company will at its option either replace same or credit customer with the purchase price thereof.

(C) Returns of allegedly defective goods will not be accepted without prior authorisation of the Company.

8. Warranty

(A) All warranties and conditions (other than those referred to in paragraph 7) whether express or implied and whether statutory or otherwise as to goods supplied by the Company and as to quality, fitness or suitability for any purpose or otherwise are hereby excluded except to the extent of any non-excludable warranty, condition or liability of the Company provided for by the Trade Practises Act or any other relevant and applicable State and/or Federal Legislation and to the extent to which any such warranty condition or liability of the Company for breach of the warranty, condition or liability (apart from any warranty, condition or liability implies to any one or more of the following as determined by the Company in its absolute discretion) is hereby limited to:

(i) in the case of goods, any one or more of the following:

- (a) the replacement of the goods or the supply of equivalent goods;
- (b) the repair of the goods;
- (c) the payment of the cost of replacing the goods or of acquiring equivalent goods;
- (d) the payment of the cost of having the goods repaired;

(ii) in the case of services:

- (a) the supplying of the services again;
- (b) the payment of the cost of having the services supplied again.

(B) No servant, agent or contractor of the Company has any authority to alter any items or conditions of paragraph 7 or paragraph 8.

9. Loss or Damage

Save as herein expressly provided the Company shall not be liable for any loss or damage direct or consequential, whether in contract tort or otherwise and whether caused or arising out of or through the negligence of the Company, its servant or agents or otherwise, of whatsoever nature or to whomsoever or whatsoever caused or arising out of or through the use of any of the goods supplied by it. The customer shall indemnify the Company against all claims made against the Company by any third party in respect thereof.

10. Exclusions

Any conditions introduced by the customer (insofar as they differ from these conditions) shall not apply to the order and the order shall be deemed to have been placed without them unless written agreement has been given by the Company modifying these conditions. The return of the customer's standard order acknowledgement form does not constitute a written agreement to the modification of these conditions of the Company.

11. Service

Any service or advice which may be offered by the Company, its servants or agents to users of its goods is rendered in all good faith but the Company shall not be liable for any loss or damage arising therefrom whether such loss or damage arises from the negligence of the Company, its servants or agents or otherwise.

12. Resale

Goods are sold to manufacturers of original equipment subject to the condition that they will not be resold except as part of the products manufactured by the customer, or as spare parts for such products unless the written agreement of the Company has first been obtained.

13. Waiver

Failure by the Company to insist upon strict performance of any term or condition shall not be deemed a waiver thereof or of any rights the Company may have, and shall not, and nor shall any express waiver, be deemed a waiver of any subsequent breach of any term or condition.

14. Default by the Customer

If the customer makes default in payment, commits an act of bankruptcy, has a receiver appointed to all or any part of its assets or undertakings, calls a meeting for the purposes of or goes into liquidation, or has a winding up petition presented against it the Company may at its option:

- (1) require payment in cash before delivery notwithstanding the terms of payment specified herein or agreed; or
 - (2) terminate an order or suspend further deliveries and recover and resell the goods and the customer hereby grants to the Company a licence for access to the customer's premises for the purpose of such recovery and to examine the goods;
- and such action shall be without prejudice to any other rights it may have.

15. Change of Customer Ownership

The customer agrees to indemnify the Company against any loss incurred by it due to any change in ownership of the customer unless written advice of such is received by the Company prior to the first delivery of any goods after the change of ownership.

16. Cancellation

The Company will not accept any cancellation and/or variation to any order placed except with the express written approval of the Company and on terms under which the Company will be indemnified against any losses resulting therefrom.

17. Severability

(A) If any provision of these terms and conditions of sale is void or voidable by any party or unenforceable or illegal but would not be void or voidable, or unenforceable or illegal as aforesaid if it were read down and it is capable of being read down, it shall be read down accordingly.

(B) Notwithstanding sub-paragraph (A) if a provision of these terms and conditions of sale is still void or voidable or unenforceable or illegal:

- (1) if the provision would not be void or voidable, or unenforceable or illegal as aforesaid if a word or those words (as the case may be) were omitted, that word or those words are hereby severed; and
 - (2) in any other case, the whole provision is hereby severed;
- and the remainder of these terms and conditions of sale have full force and effect.

18. Notices

All notices and other communications provided for or permitted hereunder shall be sent by certified or registered mail with postage prepaid, hand delivery, email or facsimile transmission to the address of that party stated in the contract to which this document relates or to such other address or persons as either party may specify by notice in writing to the other. All such notices or communications shall be deemed to have been duly given or made in relation to the relevant means of communication;

- (1) In the normal course of post after being deposited in the mail with postage pre-paid;
- (2) when delivered, by hand;
- (3) if emailed, when answer back received;
- (4) if sent by facsimile transmission, when transmitted.

Where a notice is sent by emailed or facsimile transmission any such notice shall only be deemed to have been given when received in the manner aforesaid during normal business hours or at the commencement of business of the next business day of the recipient.

19. Legal Construction

These conditions and the contract to which this document relates shall in all respects be construed and operated in accordance with the law of the State of Western Australia, Australia.