

**FASTENING SYSTEMS AUSTRALIA PTY LTD**  
**Trading as VIP INDUSTRIAL SUPPLIES (WA)**  
**ACN 088 188 578**

**TRADING TERMS AND CONDITIONS**

The following terms and conditions apply to and form part of any contract between Fastening Systems Australia Pty Ltd and the Customer for the sale of all goods by Fastening Systems Australia Pty Ltd to the Customer.

These Terms and Conditions replace any previous from Fastening Systems Australia Pty Ltd.

**1. DEFINITIONS AND INTERPRETATION**

Where the context permits, the following expressions will have the meanings given to them:

“**VIP**” means Fastening Systems Australia Pty Ltd (ACN 088 188 578) of 8 Beete Street, Welshpool Perth, Western Australia 6106;

“**Business Day**” means any day other than a Saturday or a designated Public Holiday in Western Australia;

“**COD**” means *cash on delivery* being the requirement to pay for ordered Goods at the time they are deemed to have been *delivered* to the Customer;

“**Conditions**” means these Terms and Conditions of Sale and includes any amendments to them communicated in writing to the Customer;

“**Customer**” means a party acquiring Goods from VIP,

“**delivery**” and “**delivered**” means the moment Goods come into the custody or possession of the Customer; and

“**Order**” is a written order to purchase clearly identified Goods (including quantity) at a specified price signed by or on behalf of the Customer; and

“**Quotation**” is a quotation as to the price of specified Goods given by VIP to the Customer.

**1.1** In the interpretation of these Conditions, unless specified to the contrary:

- (a) time is the essence;
- (b) words importing the singular include the plural and vice versa;
- (c) words importing any gender include all other genders;
- (d) a reference to a natural person includes a company or other corporate body and vice versa;
- (e) a reference to any legislation, regulation, code or local law includes any modification, re-enactment or substitution of it;
- (f) the obligations on the part of a Customer who is a natural person includes his heirs, executors, administrators and assigns; and
- (g) the obligations on the part of a Customer which is a company or other corporate body includes its successors and assigns.

**1.2** Any obligation imposed by these Conditions on a Customer comprised of two or more persons (whether natural, corporate or a combination of the two) binds them jointly and each of them severally.

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- 1.3 Clause headings are for ease of reference only and are not intended to affect the construction or interpretation of these Conditions.
- 1.4 If the time for performing any obligation under these Conditions expires on a non-Business Day, then time is extended until the next Business Day.
- 1.5 A waiver by VIP of a default by the Customer under these Conditions will not constitute a release of the Customer's obligation to observe and perform all of its obligations under these Conditions in the future.
- 1.6 These Conditions embody the entire agreement and understanding between the parties concerning its subject matter, and succeeds and cancels all other agreements, understandings and representations concerning the subject matter of these Conditions.
- 1.7 These Conditions can be varied by VIP at any time, provided written notice of the variation is given to the Customer, with such variation to apply to all Orders and Quotations after the date of notification.
- 1.8 These Conditions are to be governed by and construed in accordance with the laws of the State of Western Australia.

### **2. PRICES AND CONDITIONS**

- 2.1 Quotations will not constitute an offer to sell specified Goods at specified price, but rather will amount to an invitation to the Customer to make an offer to purchase the specified Goods at the quoted price, plus all freight charges.
- 2.2 Prices specified in any Quotation are applicable to that Quotation only and will not necessarily apply in any subsequent Quotation concerning the same Goods.
- 2.3 All prices quoted by VIP will be "*exclusive of GST*" with the effect that VIP will be entitled to recover any GST payable by it from the Customer on presentation of a tax invoice.
- 2.4 An Order will not be binding upon VIP until it is accepted in writing.
- 2.5 If after acceptance of an Order there are increases in the relevant currency exchange rates, duty rates, tariffs, quotas, freight rates or any other factors reasonably beyond the control of VIP, VIP reserves the right to amend the prices to include a reasonable allowance for any such increases by notice in writing to the Customer and the Order concerned will be subject to such price alterations up to and including the date of *delivery* of Goods.

### **3. DELIVERY**

- 3.1 If an accepted Order is to be *delivered* in parts, VIP reserves the right to invoice the Customer for each *part delivery* comprising the Order concerned.
- 3.2 VIP will not be liable for any loss or damage which may be suffered by the Customer (including consequential loss or damage) arising out of a delay in the *delivery* of Goods, a failure to *deliver* Goods or from *delivery* of defective Goods;
- 3.3 Without limiting the operation of the previous clause, the Customer must accept and pay for *Ordered Goods* notwithstanding late *delivery* or "*short*" *delivery*.
- 3.4 The Customer will be responsible for and indemnifies VIP for loss or damage to the Goods from the time of *delivery*.

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### **4. RETURNS**

- 4.1 The Customer must immediately advise VIP of any shortages of an accepted Order at time of *delivery* failing which the Order concerned will be deemed to have been satisfied in full.
- 4.2 The Customer must report any damaged Goods at time of *delivery* within seven (7) days of *delivery* failing which the Order concerned will be deemed to have been satisfied in full.
- 4.3 Damaged and/or defective Goods cannot and must not be returned to VIP nor will VIP be required to accept such Goods, until prior written approval has been obtained from VIP, which will involve obtaining a “**return number**” from VIP.
- 4.4 All approved returns of damaged and/or defective Goods are to be on a “**freight pre-paid basis**”.

### **5. WARRANTIES**

- 5.1 VIP warrants to the Customer that Goods supplied under an accepted Order will be:
  - (a) of merchantable quality; and
  - (b) fit for their intended purpose.
- 5.2 Apart from the previous clause and subject to any other signed Agreement between VIP and the Customer to the contrary, no other warranties are given or implied by VIP in connection with the Goods and/or their *delivery*.
- 5.3 No warranty, (express or implied), applies in connection where Goods have been damaged after *delivery* has been effected (including, without limitation, use and/or treatment in breach of manufacturer’s instructions).
- 5.4 Nothing in these Conditions is intended to exclude, restrict or modify and warranty concerning the sale of goods implied by law, including those set out in the ***Trade Practices Act (Cth) 1974 (“Implied Warranty”)***.
- 5.5 If VIP is found to have breached an Implied Warranty, VIP’s liability to the Customer will be expressly limited to any one or more of the following, (at VIP’s election):
  - (a) the replacement of the Goods concerned or the supply of equivalent goods;
  - (b) the repair of the Goods concerned;
  - (c) the payment of the cost of replacing the Goods concerned or of acquiring equivalent goods; and/or
  - (d) the payment of the cost of having the Goods concerned repaired.

### **6. TERMS OF PAYMENT**

- 6.1 Unless VIP has agreed to deal with the Customer on a credit basis, all accepted Orders will be supplied on a strictly COD basis.
- 6.2 The extension of credit to the Customer will be at all times be at the absolute discretion of VIP, and where extended the terms of payment will be “**net thirty (30) days**” of date of *delivery* (unless agreed otherwise in writing).
- 6.3 Orders are used as a confirmation only and VIP does not agree to nor can it be bound by any terms or conditions that the Customer may stipulate in an Order or any other related documents (including, without limitation correspondence

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and statements on policies) unless VIP has agreed to such terms and conditions in a document signed by or on behalf of VIP.

- 6.4** If the Customer fails to make a payment due to VIP in accordance with these Conditions, then without prejudice to VIP's other rights under these conditions, at law or in equity, VIP may in its absolute discretion, by written notice require the Customer to pay a service charge computed on the amount overdue at the rate of 1.8% per month calculated from the date on which such amount become due until payment is made; and all reasonable expenses and legal costs incurred by VIP as a result of the default in payment.
- 6.5** All payments received by VIP from the Customer, whether or not purporting to be made for some specific item or invoice, may be applied by VIP in its absolute discretion, first, in full payment of all service charges, expenses and costs under the previous clause and secondly, to the longest outstanding invoiced amount.
- 6.6** If a Customer's cheque or payment of an invoice is subsequently dishonoured by its bank, VIP reserves the right to charge a \$30.00 dishonour fee.

## **7. TITLE**

- 7.1** Until the Customer pays in full the agreed price for *delivered* Goods pursuant to an Order together with any additional charges and/or interest due under these Conditions:
- (a) title in such Goods remains with VIP,
  - (b) the relationship between the parties will be fiduciary, and the Customer will be deemed to hold such Goods as bailee for VIP,
  - (c) the Customer must store such Goods separately from its other merchandise; and
  - (d) whilst the customer is authorised to sell such Goods to third parties, it does so as an agent for VIP except that such "agency" does not allow the Customer to represent to such third parties that it is in any way acting for VIP with effect that VIP will not be bound to or by any contracts made between the Customer and such third parties.

## **8. DEFAULT**

- 8.1** If the Customer:
- (a) fails to make a payment due to VIP under these Conditions;
  - (b) being a natural person, commits an act of bankruptcy;
  - (c) being a corporation, becomes insolvent (whether technically or actually); or
  - (d) being a corporation, has an administrator, a receiver, a receiver and manager or a liquidator (provisional or otherwise) appointed over its assets and undertaking), VIP may, without prejudice to any other rights it may have under these Conditions, at law and/or in equity, do any or all of the following:
- 8.1.1** withdraw any credit facilities that may have been extended to the Customer and demand immediate payment of all monies owing to VIP;
- 8.1.2** withhold any further *deliveries* of Goods;

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- 8.1.3 in respect of Goods already *delivered*, enter onto the Customer's premises without being deemed to have committed trespass to recover the Goods and then resell them for its own benefit; and/or
- 8.1.4 suspend and/or terminate performance of any other contracts which VIP has with the Customer

### **9. PRIVACY POLICY**

- 9.1 VIP is committed to the protection of the Customers' privacy.
- 9.2 This statement has been prepared in accordance with the National Privacy Principles as outlined in the *Privacy Act 1988 (Cth)*.
- 9.3 By ordering Goods and/or applying for credit the Customer is deemed to accept the terms of this Privacy Policy, including consent to the collection and use of personal information about the Customer (and, if applicable, its directors).
- 9.4 In providing personal details about the Customer (and, if applicable, its directors) consent is given to VIP using such personal information ("**Personal Information**") for purposes:
  - (a) concerned with the granting of credit or the continuation of credit facilities (as the case may be);
  - (b) concerned with responding to Customer queries;
  - (c) of compiling of VIP's database; and
  - (d) concerned with research and/or marketing.
- 9.5 The Customer (and/or if applicable, its directors) are deemed to have consented to VIP using Personal Information to send out personalised newsletters or emails outlining products and product lines which may be of interest to the Customer and/or its directors.
- 9.6 VIP will not sell, trade or disclose any part of the Personal Information to any third party without first obtaining a signed written consent, unless VIP is required to do so by law.
- 9.7 VIP reserves the right to modify the Personal Information and to collate, edit or track in order to improve its services to the Customer, or if required by law.
- 9.8 VIP will endeavour to keep your Personal Information up to date and accurate. However, it is the Customer's responsibility to let VIP know if there are any details which have been incorrectly advised and/or have changed.
- 9.9 Whilst VIP will take all due care and diligence in protecting the security, confidentiality and privacy of Personal Information VIP cannot guarantee that its systems will be completely free from third party interception or damage to information transmitted by email which is caused by viruses. However, VIP will take all reasonable precautions to prevent security breaches.
- 9.10 The Customer (and, if applicable, its Directors) will be entitled to access Personal Information. However, there may be exceptional circumstances where access may be refused by VIP such as where access would be unlawful.
- 9.11 Access to Personal Information must first be requested in writing to VIP specifying the documents and/or information required.
- 9.12 If the Customer (or if applicable, its directors) are unhappy with any aspect of the way Personal Information has been collected or handled by VIP, this should be communicated to VIP in writing as soon as possible.

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**I, the undersigned ACKNOWLEDGE receiving, reading and understanding the above Terms and Conditions, and further that they form the basis of my or my Company's business dealings with Fastening Systems Australia Pty Ltd (as the case may require).**

**DATED** this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_

**SIGNED** by \_\_\_\_\_ )  
in the presence of: \_\_\_\_\_ ) \_\_\_\_\_

(Signature of Witness)

(Printed name of Witness)

NAME OF COMPANY: \_\_\_\_\_

**POSITION IN COMPANY:** \_\_\_\_\_