

TERMS AND CONDITIONS: FRAMELESS SHOWERS ONLINE

This is an agreement between you (referred to as “you”, “your” and “Buyer”) and CPD Holdings Pty Ltd T/A FRAMELESS SHOWERS ONLINE ABN 16 098 466 785 (referred to as “we”, “our” or “us” as the case may be) governing your use of this Website and making an enquiry or placing an order with us. Please read these terms and conditions carefully.

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By clicking “I accept”, or making an enquiry or placing an order, or taking steps to place an order:

- i. You agree to be bound by these terms and conditions; and
- ii. You warrant to us that:
 - a) you are the person’s name entered by you as ‘the Buyer’; or
 - b) you are duly authorised by the Buyer to apply for credit and entered into this agreement.

These terms and conditions are comprised of the following parts (listed in order of precedence):

1. General Disclaimer;
2. Definitions and Interpretation;
3. Manufacture Terms and conditions;
4. Conditions of Sale of Goods;
5. Website Terms of Use;
6. Privacy Policy.

If there is an inconsistency identified between any one of the above parts, the part in higher order of precedence shall prevail to the extent of that inconsistency.

1. GENERAL DISCLAIMER

- 1.1. Any information offered by the Seller on this Website or otherwise (“supplied information”) is intended to be a general guide only, and shall be accepted by the Buyer as a general guide only, and the Seller disclaims liability for any measurements made by the Buyer on reliance in reliance on the supplied information including (without limitation) measurements and other calculations to the appropriate size and configuration of any goods supplied by the Seller.

2. DEFINITIONS AND INTERPRETATION

2.1. Definitions

Additional Charge means expenses incurred by the Supplier, at the Buyer's request or reasonably required as a result of the Buyer's conduct.

Agreed Order means an Order which the Seller has agreed to fulfil, following the Buyer’s confirmation that the specification as nominated by the Buyer of the Made-To-Measure Goods are correctly set out in the PDF Document.

Australian Consumer Law means Schedule 2 of the *Competition and Consumer Act 2010 (Cth)*.

Available-for-Pickup means the date from which Goods are ready for collection from a Collection Point.

Business Day means a day that is not a Saturday, Sunday or public holiday in Sydney, New South Wales.

Buyer means the purchaser of the Goods, whose details are set out in the billing section of the Checkout and the Invoice.

Buyer's Space means the bathroom, shower or other area in premises in which the Buyer intends to install the Goods.

Collection Centre or Collection Point means a place for the Buyer's collection of Goods in an Agreed Order, being one of the locations offered by the Seller.

Checkout means the section of the Website entitled 'Checkout'.

Credit Voucher means a credit note issued by the Supplier to a Buyer in the dollar amount already paid by the Buyer to the Supplier for the Buyer's placement of an Order, which credit note can be applied by the Buyer in payment of a subsequent Order in the amount equalling or exceeding the dollar amount of the credit note.

Discount Voucher means a voucher issued by the Seller for the Buyer to use as partial credit against a future purchase of Goods.

FSO means Frameless Showers Online.

FSO Care & Maintenance Instructions means the information, guidance requirements and instructions available on the Website at <https://www.framelessshowersonline.com.au/care-and-maintenance/> as updated from time to time.

Free Collection Point means a Collection Centre offered by the Seller at no additional cost to the List Price for a given shower package.

Glass means processed heat toughened glass sheet.

Goods means any goods supplied or to be supplied by the Seller, including (without limitation):

- a) those specified in the Agreed Order;
- b) Made-to-Measure Goods.

GST has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.

Home Delivery means delivery of Goods in an Order to the delivery address nominated by the Buyer in an Order under these Terms of Trade, not being collection from a Collection Centre, whereby the Seller's delivery contractor parks the delivery vehicle at the ground level at the nominated delivery premises at the nearest flat and hard service that the delivery vehicle can drive to and tailgate, being either:

- a) Ute Delivery Option; or
- b) Truck Delivery Option.

Insolvency Event in relation to a party, means that the party:

- a) enters into any composition or arrangement with its creditors or has a receiver or administrator appointed over any of its assets; or
- b) ceases to trade or carry on business in the usual manner; or

- c) where the party is a natural person – is declared bankrupt or commits any act of bankruptcy, or gives any authority to a trustee under section 188 of the *Bankruptcy Act 1966 (Cth)*; or
- d) where the party is a company – a petition for winding up is filed, or an administrator or receiver is appointed, or is the subject of judicial management (other than for the purpose of amalgamation or reconstruction).

Installation Procedure means the information contained under the heading “installation procedure” which is available in “my account” and a hyperlink to the PDF document.

Invoice is a document showing a description of the Goods along with the sum, in an amount owing or an amount having been paid, noting the GST component along with the Seller and Buyer details.

List Price is the price of Goods as calculated on the Website at the time of placing an Order.

Losses means any costs incurred.

Made-to-Measure Goods means the Goods for a shower screen package either jointly or separately, being the made-to-measure glass and the associated hardware, which are not made-to-measure.

Notify means issuance of a notice in writing by the specified party to the other party.

Order means a commitment from the Buyer to Order and purchase from the Seller. In doing so, the Buyer provides payment details and authority for the Seller to transact a charge in the sum as specified in the Checkout.

Order Date is the date the Buyer initiated an Order with the Seller by accepting these Terms of Trade and providing payment details.

Paid Collection Point means a Collection Centre offered by the Seller that incurs additional cost to the List Price for a given shower package; as distinct from a Free Collection Point.

Payment Date is the date the Seller provided payment details to the Buyer.

PDF Document means a document containing the specification as nominated by the Buyer for the Buyer’s Order; and said document may also incorporate dimension specifications into a PDF drawing.

Price means the amount set out in an invoice for the Seller’s fees and charges for Goods specified in that Invoice.

Quote means a written description of the Goods to be provided.

Seller means the seller of the Goods whose details as set out on the PDF Document and the Invoice.

Specified Tolerances means AS/NZ4667 – 2000 (quality requirements for cut to size and processed glass).

Suitably Experienced Person a person who is:

- a) experienced and capable, in the taking of detailed measurements in wet areas, for installations in scenarios including factors but not limited to, out of square and out of level walls and floors, and

- b) experienced and capable, in works including but not limited to, the installation of toughened glass, the drilling of tiles and the carrying out of wet area work generally.

Terms and Conditions means the document contained herein and is synonymous with the term; Terms of Trade.

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Third Party Rates means the rates charged by third-party providers for freight, insurance, customs duties, exchange, shipping expenses, sorting and stacking charges, and cartage, but excluding credit card fees.

Truck Delivery Option means a Home Delivery with a hydraulic tail lift to unload the Goods from the delivery vehicle onto the ground next to the delivery truck.

Unpacking Procedure means the information contained under the heading “unpacking procedure” which is available in “my account” and a hyperlink to the PDF document.

Ute Delivery Option means a Home Delivery with the Buyer responsible for unloading the Goods from the delivery vehicle.

Website means the website accessible via the Internet at <https://www.framelessshowersonline.com.au/>

2.2. Interpretation

2.2.1. Nothing in these conditions exclude, restrict or modify or have the effect of excluding, restricting or modifying any condition, warranty, guarantee, right or remedy implied by law (including the *Competition and Consumer Act 2010 (Cth)*) and which by law cannot be excluded, restricted or modified.

2.2.2. In these terms of trade, unless the context otherwise requires:

- a) a reference to writing includes email and other communication established through the Supplier's Website (if any);
- b) the singular includes the plural and vice versa;
- c) a reference to a clause or paragraph is a reference to a clause or paragraph of these terms of trade;
- d) a reference to a party to these terms of trade or any other document or arrangement includes that party's executors, administrators, successors and permitted assigns;
- e) a reference to legislation or a legislative provision includes any statutory modification or re-enactment of, or legislative provision substituted for, and any subordinate legislation issued under that legislation or legislative provision;
- f) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
- g) headings are for ease of reference only and do not affect the meaning or interpretation of these terms of trade; and
- h) monetary amounts are expressed in Australian dollars being the lawful currency of the Commonwealth of Australia;

- i) if the date on which any act, matter or thing is to be done falls on a day which is not a Business Day, that act, matter or thing;
- j) if it involves a payment other than a payment which is due on demand must be done on the preceding Business Day; and
- k) in all other cases, must be done on the next Business Day.

3. MADE-TO-MEASURE TERMS AND CONDITIONS

3.1. Buyer acknowledgements

3.1.1. The Buyer acknowledges and agrees it is solely responsible for determining:

- a) whether the type of shower screens offered by the Seller is suitable for the Buyer's Space; and
- b) whether usage of that product is suitable in Buyer's Space and for the Buyer's purposes; and
- c) The Buyer's selection of shower screens, configuration and Consumables.

3.1.2. The Buyer acknowledges that the shower screen glass will be manufactured in accordance with the Agreed Order subject to the Specified Tolerances.

3.1.3. The Buyer also acknowledges and agrees that it is responsible for proper measuring up of the Buyer's Space, configuration and calculation of the sizes of the shower screens prior to the Buyer placing an Order.

3.1.4. The Buyer acknowledges the Seller's recommendations:

- a) that if the Buyer is not a Suitably Experienced Person to measure up the Buyer's Space and calculate the dimensions for a shower screen – the Buyer shall engage a Suitably Experienced Person to measure up the Buyer's Space, advise on configuration, and calculate the sizes of the shower screens prior to the Buyer placing an Order;
- b) that if the Buyer is not a Suitably Experienced Person to install the shower screens and associated hardware in the Buyer's Space – the Buyer shall engage a Suitably Experienced Person to install into the Buyer's Space the shower screens and associated hardware contained in an Agreed Order placed with the Seller; and
- c) that the Buyer read the FAQ and Design Tips on the Website and has taken that information under advisement when placing any Order.

3.2. Appointment to supply manufactured goods

3.2.1. The Buyer appoints the Seller to arrange manufacture and supply of the Made-to-Measure Goods listed in the Agreed Order subject to the Specified Tolerances.

3.2.2. The Seller agrees to arrange manufacture and or supply to the Buyer Goods under this agreement according to the Agreed Order and to supply the Made-to-Measure Goods once manufactured to the Buyer under these Terms of Trade.

3.2.3. Once an Order placed by a Buyer becomes an Agreed Order (under clause 3.5.9), the Buyer cannot change the measurements, dimensions or any other specifications of the Made-to-Measure Goods in the Agreed Order.

3.3. Price and delivery

3.3.1. The Price of Goods shall be the price displayed in the checkout at the time of Order placement. This price shall be valid until the Order is converted to an Agreed Order or for a period of 14 days, whichever event is sooner.

- 3.3.2. An Order shall not include installation of the Made-to-Measure Goods, which shall at all times remain the responsibility of the Buyer and/or its own appointed Installer.
- 3.3.3. The Price shall not include Home Delivery, or a Paid Collection Point (if selected by the Buyer), which will be at additional cost and included on the Order for the Buyer's acceptance).
- 3.3.4. The Buyer acknowledges that the expected date for delivery of the Goods shall not be less than 2 (two) weeks from the date the Agreed Order is placed and could take up to 6 (six) weeks if the initial Made-to-Measure Goods are damaged in manufacture, handling or transit.
- 3.3.5. Subject to any obligations in respect of consumer guarantees under the Australian Consumer Law, an indication in an Order of the time frame for the provision of the Goods is an estimate only and is not a fixed time frame.
- 3.3.6. The Seller reserves the right to change, vary, or update prices displayed on the Website at any time and for any reason without notice.

3.4. Price-Beat Guarantee

- 3.4.1. For the purposes of this clause (3.4) the **"Price-Beat Guarantee"** means where the Buyer finds a Made-to-Measure shower screen cheaper, we will beat it by 10% of the difference in price with our competitor.
- 3.4.2. With an Order, the Seller offers the Price-Beat Guarantee, and subject to the following terms and conditions:
- You must present proof of the lower price of a competitor prior to placing the Order or at the time of placing the Order;
 - Your price match request must be verified by us confirming the competitor's product is in stock and available for immediate sale with the same payment method has offered by us;
 - the competitor's price for the product must be an Australian advertised or marketed price that can be viewed online, in print media or on television and must be current as at the time you seek to rely on the Price-Beat Guarantee;
 - the Price-Beat guaranteed does not apply to trade, commercial, volume or liquidation pricing;
 - The competitor's hardware must be parable product to that of ours, in quality, and with the same glass-surface finish;
 - The Price-Beat Guarantee applies to one shower screen package Order only per Buyer.

3.5. Orders

- 3.5.1. Every Order by the Buyer for the provision of Goods or services must be submitted via the Website ordering system (unless otherwise agreed in writing).
- 3.5.2. Any costs incurred by the Supplier in reliance on incorrect or inadequate information provided by the Buyer in an Order may result in the imposition of an Additional Charge.
- 3.5.3. With each Order the Buyer must provide:
- 3.5.3.1. Buyer details as follows:
 - Name and street address of the Buyer;
 - Mobile number, phone number and email address;
 - If Home Delivery is required, the delivery address;

- d) If items are to be collected from a Collection Centre, the required location as selected from the locations offered on the Website during the placing of the Order.
- 3.5.3.2. a detailed specification of any Made-to-Measure Goods to be manufactured within the parameters of the specifications set out in Supplier's standard Order form, including:
 - a) Size details as follows:
 - 1) the shower recess space (length width and height);
 - 2) glass manufacture sizes including but not limited to length, width, height and locations of holes and cut outs to suit hardware.
 - b) Product details as follows:
 - 1) glass type, and optional Enduroshield shield coatings;
 - 2) hardware type and finishes (hinges, handles and other items).
- 3.5.4. Placement of an Order by the Buyer signifies acceptance by the Buyer of these terms of trade and the Price as shown in the checkout at the time of placing an Order.
- 3.5.5. Placement of an Order by the Buyer also means that the Buyer gives authority to the Seller to transact a charge as specified in the Checkout for such Order, according to the payment method nominated by the Buyer and the payment details provided by the Buyer.
- 3.5.6. Notwithstanding anything in this clause (3), the Supplier may in its absolute discretion refuse to provide Goods or services where:
 - 3.5.6.1. Goods are unavailable for any reason whatsoever;
 - 3.5.6.2. credit limits cannot be agreed upon or have been exceeded; or
 - 3.5.6.3. payment for Goods previously provided to the Buyer or any related corporation of the Buyer, or to any other party who is, in the reasonable opinion of the Supplier, associated with the Buyer under the same or another supply contract, has not been received by the Seller.
 - 3.5.6.4. The Buyer demands products or services that are not supported by the Seller's current offering on the Website.
- 3.5.7. Where an Agreed Order is cancelled by the Buyer, the Buyer indemnifies the Supplier against any Losses incurred by the Supplier as a result of the cancellation.
- 3.5.8. Upon receipt of the Buyer's Order, the Seller will confirm receipt by return email, detailing the Order in a PDF Document which may contain a drawing.
- 3.5.9. An Order placed by a Buyer shall convert into an Agreed Order:
 - a) once the Buyer has provided confirmation to the Seller that its nominated dimensions of the Made-to-Measure Goods are correctly set out in the PDF Document; and
 - b) the Seller has received payment for the Order including (if selected by the Buyer) Home Delivery or collection from a nominated Paid Collection Point (as applicable); and
 - c) The Supplier confirms receipt of the Agreed Order.
- 3.5.10. In the event the Buyer informs the Seller, prior to an Order converting into an Agreed Order, that the PDF Document received from the Supplier does not correctly set out its nominated dimensions of the Made-To-Measure Goods, the Buyer can elect to receive a Credit Voucher from the Supplier in the amount already paid by the Buyer to the Supplier.

3.6. Obligations of the Seller

3.6.1. The Seller shall arrange the manufacture of the Made-To-Measure Goods in accordance with the Agreed Order, subject to the Specified Tolerances.

3.6.2. The glass goods will comply with the specification as set out in the Agreed Order, to the extent that any tolerance variation or imperfection is within the tolerances specified in AS/NZ4667 – 2000.

3.7. Intellectual property

3.7.1. All right to all intellectual property, including but not limited to, copyright, design right, trademarks or other intellectual property remains the property of the Seller, unless otherwise agreed in writing.

3.8. Privacy

3.8.1. Our Privacy Policy can be found in part (5) below of these terms and conditions. If you have any further questions email us at support@fsoinfo.com.au.

3.9. Australian Standard's

3.9.1. The Seller warrants to the Buyer that in respect of the Glass in an Agreed Order for the Buyer:

- a) any Glass used in manufacture complies with AS/NZ (Australian Standard) 2208 1996;
- b) the Made-to-Measure Goods shall be manufactured such that they are capable of being installed in accordance with NCC 2016 and AS/NZ (Australian Standard) 1288 2006; and
- c) that glass products as made-to-measure shall conform with the quality and tolerances as per AS/NZ4667 – 2000.

and provides no other contractual warranties.

3.9.2. Except as provided in these conditions, all express and implied warranties, guarantees and conditions under statute or general law as to merchantability, description, quality, suitability or fitness of the Goods for any purpose or as to design, assembly, installation, materials or workmanship or otherwise are expressly excluded. The Seller is not liable for physical or financial injury, loss or damage or for consequential loss or damage of any kind arising out of the supply, layout, assembly, installation or operation of the Goods or arising out of the Seller's negligence or in any way.

3.10. Limited warranty

3.10.1. During the period of 1 calendar year from the date of collection or delivery of the Goods, the Seller shall as its option either replace or repair any fault to Goods without charge. This applies so long as the fault does not arise from:

- a) failure to comply with the Unpacking Procedure and/ or Installation Procedure;
- b) improper adjustment, calibration or operation by the Buyer;
- c) the use of accessories including consumables or hardware which were not supplied by the Seller;
- d) any movement, contamination, leakage, vibration, expansion, contraction, impact, extremes of temperature caused or induced by the Buyer upon the Goods in transit, being installed or otherwise;
- e) any modifications of the Goods which were not authorised in writing by the Seller;

- f) any misuse of the Goods by the Buyer or anyone for whom the Buyer has legal responsibility (including a minor);
 - g) any use or operation of the Goods outside of the physical, electrical or environmental specifications and/ or capabilities of the Goods;
 - h) inadequate or incorrect site preparation in connection with either the delivery or collection or the use of the Goods; or
 - i) improper, incorrect, substandard, non-compliant and or faulty installation;
 - j) inadequate or improper maintenance of the Goods.
- 3.10.2. All transportation charges incurred in returning defective products comprised of the Made-To-Measure Goods, or any of their component parts, for repair, together with the cost of returning them to the Buyer must be paid by the Buyer; and those charges shall not be reimbursed by the Seller to the Buyer unless and until the Seller receives those goods at its place of business referred to at the head of these conditions, and the Seller provides confirmation that the returned Made-To-Measure Goods are in fact defective or faulty.
- 3.10.3. Any Enduroshield glass coating when selected by the Buyer to be included in the Made-to-Measure Goods carries a 10 years' limited warranty from Enduroshield to the Buyer, and the Buyer shall register the warranty on the Enduroshield website within the time specified on that website and make any claim against that warranty directly to Enduroshield.

4. CONDITIONS OF SALE

4.1. General

These conditions shall prevail over all conditions of the Buyer's Order to the extent of any inconsistency and can only be waived by signed agreement between the parties, executed on behalf of the Seller by its Managing Director.

4.2. Terms of sale

4.2.1. The Goods and all other products sold by Seller are sold on these Terms and Conditions.

4.3. Website and other information

4.3.1. All specifications, drawings, and particulars of weights and dimensions in our Website or submitted to the Buyer are approximate only and any deviation from any of these things does not vitiate any contract with the Seller or form grounds for any claim against the Seller.

4.3.2. The descriptions, illustrations and performances contained in the catalogues, price lists and other advertising matter do not form part of the contract of sale of the Goods or of the description applied to the Goods.

4.3.3. Any videos on the Website are for general information purposes only. These videos are not intended to be, and do not comprise, a complete list of all the things to consider when measuring up a space for and for the installation of a shower screen. The buyer acknowledges the recommendation by the Seller that the Buyer use a Suitably Experienced Person to measure its space, calculate the appropriate shower screen size and type and install the shower screen.

4.3.4. Any verbal and or email exchange between the Buyer and the Sellers agents or employees does not constitute a waiver of these Terms of Trade in any way or part.

4.3.5. Any opinion offered by the Sellers agents or employees is not to be construed as the Sellers advice and is merely the authors opinion.

4.4. Performance

- 4.4.1. Any performance figures given by the Seller are estimates only. The Seller is under no liability for damages for failure of the Goods to attain such figures unless specifically guaranteed in writing. Any such written guarantees are subject to the recognised tolerances applicable to such figures.

4.5. Delivery Methods

- 4.6. At the time of Order placement, the Buyer must nominate either:

- 4.6.1. Home Delivery to the nominated delivery address – and courier fees and charges will be at additional cost charged to the Buyer; OR
- 4.6.2. collection from one of our Collection Centres – offered by the Seller, provided Buyer picks up the Goods on time (as per clause 4.8 below), and the Seller will provide the street address when the Agreed Order is confirmed.

4.7. Home delivery (if applicable)

- 4.7.1. This clause 4.7 applies if the Buyer has selected Home Delivery in its Order.
- 4.7.2. The Buyer must ensure there is clear and safe access for delivery of the Goods and ensure there is a person present at the delivery premises who is authorised by the Buyer to accept the delivery; and if there is not, the Buyer authorises the Seller to deliver the Goods at the Seller's discretion, or to abort the delivery.
- 4.7.3. If the "Ute Delivery Option" has been selected by the Buyer, the Buyer is responsible for unloading the Goods from the delivery vehicle.
- 4.7.4. If the "Truck Delivery Option" has been selected by the Buyer, a hydraulic tail lift shall unload the Goods from the delivery vehicle onto the ground next to the delivery truck.
- 4.7.5. If the delivery contractor arrives on the date nominated by the Seller and is unable to deliver because no one is present at the premises or considers that it is unsafe or inappropriate to do so, the Buyer will be required to pay for redelivery later.

4.8. Collection from our pick-up centres/collection centres

- 4.8.1. This clause 4.8 applies if the Buyer has selected in its Order, the option of collection from a Collection Centre. Time is of the essence, for the purposes of this clause 4.8.
- 4.8.2. If Goods are being collected, the Buyer must collect them within 10 days after Seller informs the Buyer that they are ready for collection. If the Buyer does not collect the Goods within this timeframe, we reserve the right to proceed on the basis that you have cancelled your Order, whereupon clause 3.5.7 shall apply.
- 4.8.3. A Buyer's failure to collect Goods within the timeframe stipulated in clause 4.8.2 means the Buyer may forfeit any deposit or payment the Buyer has made or is liable to make. The Seller may need to verify the Buyer's identity upon collection, and the Buyer may be required to complete and submit an "Authority for Agent to Collect" when nominating an agent for collection of the Goods.
- 4.8.4. Notwithstanding clauses 4.8.1, 4.8.2 and 4.8.3, the freight company at the Collection Centre has the right to decline handover of the Goods if the freight company forms view (in its absolute discretion) that the Buyer or the Buyer's agent does not appear to be appropriately equipped to pick up the Goods.

4.9. Time(s) of delivery

4.9.1. The Seller will notify the Buyer of when Goods are either:

- a) Available-for-Pickup or
- b) available for Home Delivery to the nominated delivery address (as applicable).

4.9.2. Home Delivery will be a delivery date from Monday to Friday (excluding public holidays) hours for delivery are generally between 7:00am and 5:30pm.

4.10. Delivery package

4.10.1. Buyer acknowledges the Goods:

- a) shall be a bulky package, be in the order of 2.2m X 1.2m X 18cm in size and weigh between 70kg and 155kg; and
- b) packed inside a timber and/ or cardboard packaging (which shall become Buyer's property nonreturnable to the seller).

4.10.2. Upon collection by the Buyer from a Collection Point, a forklift shall be used to place the Goods onto the vehicle of Buyer or its nominated agent (such as a courier); and Buyer is solely responsible for ensuring that:

- a) the collection vehicle or trailer used by Buyer/Buyer's agent is suitable and capable for collection of the Goods; and
- b) appropriate placement and securing of the Goods into or onto the collection vehicle or trailer including (without limitation) ropes or straps to secure the Goods down onto the vehicle is carried out.

4.10.3. In unpacking the Goods, the Buyer must ensure that the "Unpacking Procedure" is complied with. This is provided to the purchaser along with the PDF Document. Failure to comply with the "Unpacking Procedure" shall entitle the Seller to reject a warranty claim by the Buyer.

4.10.4. In fitting the Goods, the Buyer must ensure that the "Installation Procedure" has been complied with. This is provided to the Buyer along with the PDF. Failure to comply with the "Installation Procedure" shall entitle the Seller to reject a warranty by the Buyer.

4.11. Delivery

4.11.1. Any delivery times or dates made known to the Buyer are estimates only and the Seller is not liable for late delivery which is beyond our reasonable control.

4.11.2. The Seller will not be liable for any loss, damage or delay occasioned to the Buyer or anyone else arising from:

- a) late delivery of the Goods which is beyond our reasonable control; or
- b) damage to the Goods or other property occurring during pickup of them is from a collection centre; or
- c) damage to the Goods or other property during Home Delivery or from a Collection Centre (as applicable).

4.11.3. The Seller may at its option deliver the Goods to the Buyer in any number of instalments

4.11.4. If the Seller delivers any of the Goods by instalments, and any one of those instalments is defective for any reason:

- a) this does not constitute a repudiation of the contract of sale formed by these conditions; and

4.12. Loss or damage in transit

- 4.12.1. From the time computed as the earlier of: (a) the handling of the Goods by the Buyer or its agent or (b) collection of the Goods from a Collection Centre or (c) Home Delivery (as applicable), the Seller is not responsible to the Buyer or any person claiming through the Buyer for any loss or damage to Goods in transit caused by any event of any kind or by any person (whether or not the Seller is legally responsible for the actions of that person).
- 4.12.2. The Buyer must unpack the Goods in accordance with the Unpacking Procedure and thoroughly inspect all Goods within 24 hours of the pickup of the Goods from a Collection Centre or from completion of Home Delivery (as applicable).
- 4.12.3. If the packaging crate shows any signs of damage or the Goods show any signs of damage, the Buyer must immediately inform Seller by telephone, plus notify the Seller by email.
- 4.12.4. Without limiting the generality of clauses 4.12.1, 4.12.2, and 4.12.3 and the operation of clause 3.12 (Limited manufacturer's warranty), the Seller is not liable for damage or loss or injury to Goods caused or contributed to by the Buyer or its agent failing to follow instructions relating to the Goods, modifying them, failing to appropriately maintain or store them, or using them for unintended purposes.

4.13. Acceptance of Goods

- 4.13.1. If the Buyer fails to advise the Supplier in writing of any fault in Goods or failure of Goods to accord with the Buyer's Order within 24 hours of delivery or of being picked up from the Collection Centre, the Buyer is deemed to have accepted the Goods and to have accepted that the Goods are not faulty and accord with the Buyer's Agreed Order. Nothing in this paragraph affects the Buyer's rights for any alleged failure of a guarantee under the Australian Consumer Law.
- 4.13.2. The Buyer expressly agrees that use of the Goods is at the Buyer's risk. To the full extent allowed by law, the Supplier's liability for breach of any term implied into these terms of trade by any law is excluded.

4.14. Shortage

- 4.14.1. The Buyer waives any claim for shortage of any Goods delivered if a claim in respect for short delivery has not been lodged with the Seller within 7 days from the date of receipt of Goods by the Buyer.

4.15. Prices

- 4.15.1. Unless otherwise stated, all prices quoted by the Seller are inclusive of GST.
- 4.15.2. The Price of Goods shall be the price displayed in the Checkout at the time of Order placement. This price shall be valid until the Order is converted to an Agreed Order or for a period of 14 days, whichever event is sooner.

4.16. Payment

- 4.16.1. The Price of Goods including GST as listed in the Checkout is due at the time of Order placement.
- 4.16.2. The available methods of payment are MasterCard and Visa card via the third-party E-Way facility, PayPal and EFT directly to the Seller. The Seller will not charge any transaction fees over and above the Price, with the exception of fees incurred to the Seller as a result of dishonoured, disputed or withdrawn payments. The use of the E-Way and the PayPal facilities is subject to the terms of use of that third-party facility.

4.16.3. The Buyer must pay interest on any outstanding amount not received by the Seller within 7 days of the Order date. Interest will be calculated on the basis of the National Australia Bank Limited business overdraft rate on a secured facility, as published from time to time plus 2%. Interest will accrue daily from the Payment Date until the outstanding amount is paid in full.

4.16.4. In the event that moneys due for payment by the Buyer to the Seller are not paid by the Payment Date or the Buyer commits an Insolvency Event, then all moneys owing by the Buyer to the Seller will become immediately payable without the necessity for any demand for payment of those moneys being made by the Seller. The Buyer must pay to the Seller any costs, expenses or losses incurred by the Seller as a result of the Buyer's failure to pay Seller all amounts outstanding by you to Seller by the Payment Date. This includes but is not limited to all: debt collection costs, debt collection commissions and legal recovery costs.

4.17. Ownership of Goods/risk

4.17.1. Ownership of the Goods and risk relating to them passes to the Buyer from that date being the earlier of: (a) Available-for-Pick up; and (b) Home Delivery.

4.18. Buyer's property

4.18.1. Any property of the Buyer under the Seller's possession, custody or control is completely at the Buyer's risk as regards loss or damage caused to the property or by it.

4.19. Storage of Goods – Available-for-Pickup or ready for delivery

4.19.1. The Seller reserves the right to charge a reasonable fee for storage if the Goods are not picked up from the Seller following service of a Notice upon the Buyer.

4.19.2. The parties agree that the Seller may charge for storage from the 10th day after the Seller has served a Notice upon the Buyer to pick up or provide access for delivery. In the alternative, and at the Sellers election at the instant, the parties agree that the Seller has the right to dispose of the Goods at the Buyers expense.

4.20. Returned Goods

4.20.1. Except for any provisions to the contrary contained in these Terms and Conditions, the Seller is not under any duty to accept Goods returned by the Buyer. The Seller will do so only on terms to be agreed in writing in each individual case.

4.20.2. If the Seller agrees to accept returned Goods from the Buyer under the preceding clause, the Buyer must return the Goods to the Seller at the Seller's place of business referred to at the head of these conditions.

4.20.3. Except for any provisions to the contrary contained in these Terms and Conditions, the cost of any courier, transportation, special packing and packing materials used in relation to the return of Goods are at the Buyer's expense.

4.21. Goods sold

4.21.1. All Goods to be supplied by the Seller to the Buyer are as described on the Agreed Order, and subject to the Specified Tolerances. This and the description on such Agreed Order prevails over all other descriptions of the Goods including any specification or enquiry of the Buyer.

4.22. Confidentiality

4.22.1. The Seller and Buyer agree that these Terms and Conditions and all related information and document(s) are confidential and will not be disclosed to unauthorised

representatives or third parties, except to the extent disclosure is permitted by these Terms and Conditions or required by law.

4.23. No Waiver

- 4.23.1. A power or right is not waived solely because the party entitled to exercise that power or right does not do so.
- 4.23.2. A single exercise of the right will not preclude any other further exercise of that power or right and or any other power or right.
- 4.23.3. A power or right may only be waived in writing, signed by the party and be bound by the waiver.

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4.24. Termination

- 4.24.1. This agreement will automatically terminate if a party commits and Insolvency Event.
- 4.24.2. Either party may terminate this agreement if the other party is in material breach of any of its obligations under this agreement and if the breach is capable of remedy fails to remedy the breach for a period of 40 days after receipt of a written notice by the other party requiring rectification of the breach.
- 4.24.3. Exercise of the right of termination afforded to either party under this clause will not prejudice the legal rights or remedies which either party may have against the other in respect of a breach of any term, condition or warranty of this agreement.
- 4.24.4. The obligations of the parties that by their nature could reasonably be construed as being intended to continue to apply beyond the termination of this agreement will continue to apply.

4.25. Place of contract

- 4.25.1. This agreement shall be governed by and construed in accordance with the law applicable in the State of New South Wales. The parties submit to the non-exclusive jurisdiction of the courts and tribunals of the governing law jurisdiction, as located in Sydney, New South Wales. Nothing in this clause is intended to undermine the jurisdiction of the Federal Court of Australia or Federal Circuit Court of Australia.

4.26. Force Majeure

- 4.26.1. The Seller will have no liability to the Buyer in relation to any loss, damage or expense caused by the failure of Seller to complete and Agreed Order or to deliver the Goods therein as a result of: fire, flood, tempest, earthquake, riot, civil disturbance, theft, crime, strike, lockout, breakdown, war, the inability of normal suppliers to Seller to supply necessary materials or any other matter beyond the control of Seller.

4.27. Responsibility to Insure

- 4.27.1. The Seller has no responsibility to insure any of your property in the possession of Seller. You must pay the cost of any insurance arranged by the Seller at your request.

4.28. Miscellaneous

- 4.28.1. These terms of trade and any Quotes and written variations agreed to in writing by the Seller represent the whole agreement between the parties relating to the subject matter of these terms.
- 4.28.2. These terms of trade supersede all oral and written negotiations and communications by and on behalf of either of the parties.
- 4.28.3. In entering into these terms of trade, the Buyer has not relied on any warranty, representation or statement, whether oral or written, made by the Supplier or any of its

employees or agents relating to or in connection with the subject matter of these terms of trade.

- 4.28.4. If any provision of these terms of trade at any time is or becomes void, voidable or unenforceable, the remaining provisions will continue to have full force and effect.
- 4.28.5. A notice or other communication required or permitted to be given by one party to another must be in writing to the address shown on an Order (or as varied pursuant to this paragraph) and delivered personally, or sent by pre-paid mail to the address of the addressee specified in the relevant Order; or sent by fax to the fax number of the addressee specified in the relevant Order, with acknowledgment of receipt from the facsimile machine of the addressee; or sent by email to the email address of the addressee specified in the relevant Order or sent by text to the Buyer's mobile number as specified in the relevant Order.
- 4.28.6. A notice or other communication is taken to have been given (unless otherwise proved) if mailed, on the second Business Day after posting; or if sent by fax or email before 4 pm one Business Day at the place of receipt, on the day it is sent and otherwise on the next Business Day at the place of receipt.
- 4.28.7. A party may only change its postal or email address or fax number for service by giving notice of that change in writing to the other party.