

Fasteners Direct Terms and Conditions

1.0 GENERAL

1.1 These Terms and Conditions of Sale ("Terms");

1.1.1 apply to the sale and supply of all the goods or services by Fasteners Direct Pty Ltd (ABN 37 612 290 650) ("Fasteners Direct") to the exclusion of all other terms and conditions whatsoever, whether contained or implied in or from any order from the Customer or from any conduct of or representations made by the Customer or Fasteners Direct;

1.1.2 will be deemed incorporated in any order placed by the Customer;

1.1.3 will prevail over all other conditions of the Customer's order to the extent of any inconsistency (except where waived by Fasteners Direct in writing);

1.1.4 may be changed at any time except where they already apply to a particular order, in which event these Terms may only be changed by agreement between Fasteners Direct and the Customer;

1.1.5 will not be read or applied so as to 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*) and which by law cannot be excluded, restricted or modified.

2.0 QUOTATIONS

2.1 Where Fasteners Direct provides a written quotation for the supply of goods to the Customer, such quotation will be valid for thirty (30) days and is subject to re-quotation thereafter.

2.2 Unless otherwise agreed in writing, all prices quoted include the cost of delivery to the Customer and the goods are offered subject to stock availability at the time the Customer accepts the quotation.

2.3 Quoted prices may necessitate variations and will therefore need to be re-negotiated with the Customer.

2.4 Any taxes, duties and charges (if any) included in the quotation are based upon the rates of those taxes, duties and charges at the time of quotation and all variations in the rates of such taxes, duties and charges as a result of amendment of the relevant Acts or Regulations, or changes of interpretation of the relevant Acts, Regulations, By-laws or Classifications will be borne by the Customer.

3.0 TERMS OF PAYMENT

3.1 If the Customer seeks any variation to an order after Fasteners Direct has issued an order confirmation then Fasteners Direct is free to either accept the variation or not and if Fasteners Direct does not agree to the variation then Fasteners Direct is free to terminate the contract without any liability on the part of Fasteners Direct. If the variation is sought at any time after Fasteners Direct has incurred labour costs, purchased goods or materials or commenced production in respect of the order then the Customer will be liable for the full purchase price notwithstanding any termination of the contract by Fasteners Direct.

3.2 Unless otherwise agreed by Fasteners Direct, payment for goods is to be made by the Customer by clear funds:

3.2.1 at the time of delivery or collection of the goods where Fasteners Direct provides a valid Tax Invoice at the time of delivery or collection; or

3.2.2 within (1) business day of Fasteners Direct providing a valid Tax Invoice after the time of delivery or collection.

3.3 Fasteners Direct may in its absolute discretion require payment of a deposit at the time of the Customer placing an order.

3.4 If credit is given, the settlement of any given Tax Invoice is payable in full within 30 days of month end following of the date of the invoice.

3.5 The Customer agrees that all payments are to be made without retention.

3.6 In the event of any payments or part thereof remaining unpaid after such period of thirty (30) days Fasteners Direct in its absolute discretion may charge interest thereon at the rate of two (2) per cent per annum above the rate set out pursuant to Section 2 of the *Penalty Interest Rates Act 1983* during the period such unpaid balance remains unpaid and such interest will be added to the said balance due from the Customer to Fasteners Direct and calculated on a daily basis.

3.7 Notwithstanding the imposition of interest charges pursuant to this Condition 3.0, such interest charges will not be regarded as allowing any time for payment of any amount owing but are agreed as constituting compensation payable to Fasteners Direct because of the delay in payment and all such outstanding monies will remain immediately due and payable to Fasteners Direct and Fasteners Direct will be entitled to take legal proceedings at any time for recovery of any monies bearing interest charges pursuant to this Condition 3.0.

3.8 In addition to Fasteners Direct' other rights set out in this Condition 3.0, the Customer agrees that Fasteners Direct will have the right (although it will not be bound to do so) to suspend delivery to the Customer of all or any outstanding orders if the Customer is in default of these Terms.

4.0 SECURITY FOR GOODS

4.1 Words and phrases used in this Clause 4.0 which are defined in the *Personal Property Securities Act 2009* ("Cth") ("the PPS Act") have the same meanings as the meanings set out in that Act.

4.2 Legal ownership of goods supplied by Fasteners Direct will not pass to the Customer until the Customer has paid all monies owing to Fasteners Direct for those particular goods.

4.3 The risk in the goods (including, but not limited to, loss or damage to the goods) will pass to the Customer upon delivery of the goods by Fasteners Direct to the Customer, its agent or its carrier.

4.4 The Customer hereby grants a security interest to Fasteners Direct over all goods supplied by Fasteners Direct pursuant to these Terms until the Customer has made payment of all monies owing to Fasteners Direct for those particular goods and these Terms constitute a Security Agreement for the purposes of the PPS Act.

4.5 The security interest held by Fasteners Direct includes an interest in goods that become an accession to other goods.

4.6 Until such time as the Customer has made payment of all monies owing for goods supplied by Fasteners Direct:

4.6.1 Fasteners Direct grants the Customer a licence to use, fix or install the goods;

4.6.2 The Customer may on-sell the goods to a third party, in which event the Customer will hold any part of the proceeds of such sale as relates to the goods upon trust for and as fiduciary of Fasteners Direct and the Customer will immediately remit such monies to Fasteners Direct to be applied toward any outstanding monies owed to Fasteners Direct;

4.6.3 The Customer will not otherwise deal with the goods in any way which may be adverse to Fasteners Direct;

4.6.4 If the Customer fails to comply with a request to return the goods to Fasteners Direct, or if the Customer commits any act of bankruptcy or insolvency, or if an administrator or liquidator is appointed to the Customer (but not a receiver or a receiver and manager), then Fasteners Direct (or its agents) may enter upon and into land and premises owned, occupied or used by the Customer where the goods are situated and take possession of the goods.

4.7 The Customer must do all things necessary to assist Fasteners Direct to perfect and enforce its security interest to the fullest extent available at law, including enabling Fasteners Direct to gain first priority for its security interest. Accordingly, the Customer must not grant a security interest in the equipment to any other party without Fasteners Direct' prior written consent.

4.8 The parties agree that Sections 96, 125, 142 and 143 of the PPS Act shall not apply to these Terms.

4.9 The Customer waives its rights to receive any notifications, verifications, statements, disclosures, proposals and any other documentation specified under Sections 95, 121(4), 130, 132(3)(d), 132(4), 135, 157 of the PPS Act

4.10 For the purposes of Section 275 of the PPS Act, the Customer agrees not to disclose any information provided by Fasteners Direct under that Section to any third party without Fasteners Direct' prior consent in writing (unless required by law or the information has entered the public domain).

4.11 The Customer must not change its company or business name without giving Fasteners Direct at least fourteen days prior notice or relocate its principal place of residence outside of Australia.

4.12 The Customer indemnifies Fasteners Direct for any costs, fees and expenses Fasteners Direct incurs in the enforcement of the security interest.

4.13 Receipt by Fasteners Direct of any form of payment for goods other than cash will not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then the security interest will continue to apply in relation to those goods.

5.0 DELIVERY

5.1 The Applicant acknowledges and accepts that any estimated delivery or supply of goods provided by the Supplier is an estimate only and the Supplier will not be liable for any loss suffered by the Applicant as a result of any delay in the delivery of goods.

5.2 Delivery will be made within normal business hours between Monday to Friday, 8.00am to 5.00pm only (unless otherwise agreed to in writing).

5.3 The Customer will within one (1) business day from the date of delivery give written notice to Fasteners Direct to allege that the goods are not in accordance with its order. If the Customer does not give such notice then subject to the extent permitted by statute the goods or services will be deemed to have been accepted by the Customer.

5.4 Fasteners Direct is not responsible to the Customer or any person claiming through the Customer for any loss or damage to goods in transit caused by any event of any kind by any person (whether or not the Customer is legally responsible for the person who caused or contributed to that loss or damage).

6.0 WARRANTIES AND LIABILITY

6.1 The only conditions and warranties which are binding on Fasteners Direct in respect of the state, quality or condition of the goods or services sold to the Customer are those imposed and required to be binding by statute (including the *Competition and Consumer Act 2010*).

6.2 If the goods supplied are not manufactured by Fasteners Direct the guarantee or warranty of the manufacturer of those goods is accepted by the Customer and is the only guarantee given to the Customer in respect of the goods.

6.3 Upon receiving a request from the Customer, Fasteners Direct agrees to assign to the benefit of any warranty or entitlement to the goods that the manufacturer has granted to Fasteners Direct under any contract or by implication or operation of law to the extent that the benefit of any warranty or entitlement is assignable.

6.4 In particular, and without limiting the generality of the limited liability set out in this Condition 6.0, the Customer acknowledges that:

6.4.1 Fasteners Direct is not liable for any delays in supplying the goods where those delays are caused by circumstances beyond Fasteners Direct' control, including but not limited to delays in the supply of goods to Fasteners Direct from its third party suppliers; and

6.4.2 the Customer purchases, uses, distributes and sells the goods at its own risk and Fasteners Direct is not liable to the Customer or any clients of the Customer for any claims, losses (whether direct or consequential), costs or damages of whatsoever nature and howsoever arising and whether claimed or incurred by the Customer or any third party (including for damage caused to any property as a result of using the goods), provided only that such limitation of liability will not apply in the event of there being any proven breach of any statutory warranty.

6.5 The Customer indemnifies Fasteners Direct against:

6.5.1 all liability of whatsoever nature and howsoever arising which may be claimed or demanded in legal proceedings or otherwise by any third party in respect to the goods supplied by Fasteners Direct; and

6.5.2 all costs, fees and charges on a solicitor-client basis incurred by Fasteners Direct in the event of a default by the Customer of any of these Terms.

6.6 To make a warranty claim as please contact your Fasteners Direct customer service team on sales@fastenersdirect.com.au or 07 3899 8004.

7.0 MISCELLANEOUS

7.1 The Customer will not be entitled to withhold or set off payment of any amount due to Fasteners Direct under these Terms whether in respect of any claim of the Customer in respect of faulty or defective goods or services, or for any other reason which is contested, or liability which is not admitted by Fasteners Direct.

7.2 No order may be cancelled prior to delivery of its goods except with Fasteners Direct' written consent and upon terms which will indemnify Fasteners Direct against all losses.

7.3 Unless otherwise required by law, Fasteners Direct will only accept the return of goods in its sole discretion and may charge the Customer a 10% re-stocking and administration fee for any returned goods, which the Customer acknowledges is reasonable to cover loss and expense incurred by Fasteners Direct.

7.4 Any delay in or failure by Fasteners Direct to enforce any term, warranty or condition of these Terms will not be deemed a waiver thereof or of any rights Fasteners Direct may have and no express waiver will be deemed a waiver of any subsequent breach of any term, warranty or condition.

7.5 If any provision of these Terms is determined by any statute or any court having jurisdiction in relation thereto to be illegal, invalid, void, voidable or unenforceable the legality or enforceability of the remainder of these Terms will not be affected and the illegal, invalid, void, voidable or unenforceable provision will be deemed deleted from these Terms to the same extent and effect as if never incorporated herein and the remainder of these Terms will continue in full force and effect.

7.6 These Terms will survive any accepted repudiation or other termination of the contract to supply to goods or services existing between Fasteners Direct and the Customer.

7.7 These Terms will be governed and interpreted according to the laws of Queensland and the parties agree to submit to the non-exclusive jurisdiction of the courts of Queensland