

## 1. DEFINITIONS

In these Standard Conditions:

"**Buyer**" means the entity purchasing the Goods; and

"**Company**" means Precision Screen Pty Ltd ABN 95 010 941 634; and

"**Goods**" means the products and/or services the subject of each contract between the Company and the Buyer.

## 2. GENERAL

These Standard Conditions will be deemed incorporated in any order placed by the Buyer and any acceptance of a Buyer's order by the Company will be deemed subject to the acceptance by the Buyer of these Standard Conditions. These Standard Conditions override and replace any other conditions of the Company or the Buyer.

## 3. TERMS OF SALE

All Goods sold by the Company are sold on these Standard Conditions.

## 4. QUOTATIONS AND ORDERS

- 4.1. A quotation is not an offer or obligation to sell. A quotation includes only such Goods as are specified in it.
- 4.2. The Company reserves the right:
  - 4.2.1. to cancel any sale where Goods offered ex stock have been previously sold or otherwise committed; and
  - 4.2.2. to reject any order which the Company has not expressly or by conduct accepted.
- 4.3. On acceptance of any order by the Company, the Buyer must pay to the Company a deposit equal to 20% of the total contract price (unless another amount is agreed in writing) within 2 business days of the acceptance.

## 5. PRICES

- 5.1. All prices are subject to change without notice and orders are accepted by the Company on the condition that they will be invoiced at the prices ruling at the date of despatch. All prices are strictly net unless otherwise stated.
- 5.2. Every endeavour will be made to give 30 days notice of any increase.
- 5.3. All prices shown in published catalogues or price lists are recommended selling prices only and there is no obligation on the part of the Company or any reseller to maintain such prices.

## 6. VARIATIONS

Any variation to an order must be requested by the Buyer in writing and will not be effective until:

- 6.1. any consequent variation in price has been accepted by the Buyer; and
- 6.2. the variation has been accepted by the Company in writing.

## 7. PACKING

Unless stated otherwise in the quotation the price quoted includes packing in accordance with the Company's standard practice. Any other packing requested by the Buyer or deemed necessary by the Company will be charged in addition to the price quoted.

## 8. TAX AND EXCHANGE RATES

- 8.1. The prices quoted do not include sales or goods and services tax unless specifically stated.
- 8.2. The Buyer must pay for goods and services tax, custom dues, port rates, insurance, licence fees and other duties, taxes or government charges ("**Taxes**"). All Taxes (if any) included in a quotation are based upon the rates of those Taxes at the time of quotation. All variations in the rates of such Taxes will be to the Buyer's account.
- 8.3. Variations in rates of exchange on imported Goods affecting the amount paid by the Company for Goods supplied will also be to the Buyer's account.

## 9. TERMS OF PAYMENT

- 9.1. If the Company has accepted the Buyer's application for credit, each account is payable within 30 days of the end of the month of despatch or collection of the Goods unless otherwise agreed in writing. The Company is not obliged to continue to supply Goods to the Buyer on credit and may at any time give notice to the Buyer requiring any order for Goods delivered after such notice to be paid for on delivery or prior to despatch of the Goods.
- 9.2. If a credit application has not been accepted, or the Buyer's credit limit imposed by the Company has been exceeded, Goods must be paid for on delivery or prior to despatch of the Goods (as the case may be).

- 9.3. Where Goods are delivered outside of Australia, payment must be made by irrevocable letter of credit confirmed by an Australian bank approved by the Company against the usual shipping documents.
- 9.4. If payment for Goods is not made when due, the Buyer must:
- 9.4.1. pay interest at the rate of two (2) per cent per annum above the rate charged from time to time to the Company by its bank for overdraft accommodation during the period any amount remains unpaid, calculated on a daily basis. A certificate signed by a manager of the Company's bank will be conclusive evidence of the rate charged by the bank to the Company for overdraft accommodation; and
- 9.4.2. reimburse the Company for all costs including legal costs on a full indemnity basis incurred by the Company in collecting any late payments.
- 9.5. The imposition of interest charges will not be regarded as allowing any time for payment of any amount owing. All overdue amounts remain immediately due and payable to the Company and the Company may take steps at any time for recovery of any overdue amounts.

## **10. DELIVERY AND TRANSPORT**

- 10.1. Unless otherwise expressly stated by the Company, prices exclude costs of delivery. Delivery will be ex-works the Company.
- 10.2. The Buyer must nominate the preferred freight method and be responsible for all freight charges.
- 10.3. If delivery is arranged by the Company for any reason, the following conditions will apply:
- 10.3.1. the Buyer is responsible for the delivery costs;
- 10.3.2. quotes will be organised on the basis of delivery on normal working days during normal working hours; and
- 10.3.3. delivery will be to the nearest accessible point of the Buyer's site or depot.
- 10.4. Freight cost on return of any Goods which are not in accordance with the Buyer's order will only be paid by the Company if returned by the Company's nominated transport.
- 10.5. The Buyer warrants that where delivery is to be made by road transport, sufficient and suitable access to the destination is available, including a road surface capable of withstanding the weight and size of the transport and loads involved. If the Company incurs any additional costs or expenses, the full amount of them will be payable on demand by the Buyer.
- 10.6. Any delivery dates or periods are for information purposes only and do not form part of the contract unless specifically agreed in writing to be of the essence of the contract. In the

absence of a specific agreement, the Company accepts no liability for any loss or damage of whatever nature and however arising which may be suffered by the Buyer as a result of any failure on the part of the Company to deliver Goods on or within the dates or periods.

- 10.7. The Buyer agrees to provide at the Buyer's expense (if requested by the Company) assistance to the Company's driver or contract carriers in off loading heavier items.
- 10.8. The Company may at its option deliver (or make available for collection) the Goods to the Buyer in any number of instalments. If the Company delivers (or makes available for collection) any of the Goods by instalments and any one of those instalments is defective for any reason:
  - 10.8.1. it is not a repudiation of the contract; and
  - 10.8.2. the defective instalment is a severable breach that gives rise only to a claim for compensation.

## **11. STORAGE**

If the Buyer fails to take possession of the Goods or fails to provide delivery instructions to the Company within seven (7) days from the date on which the Buyer is notified that the Goods or any part of them are ready for delivery, then on the expiry of that 7 day period:

- 11.1. risk in the Goods will immediately pass to the Buyer;
- 11.2. the Company will be entitled to payment for the Goods as if the Goods had been delivered; and
- 11.3. the Company may arrange storage of the Goods at its warehouse or some other suitable place and all storage costs and other incidental costs must be paid by the Buyer.

## **12. INSPECTION AND TESTING**

The Company may permit the Buyer to inspect and test the Goods prior to delivery for an additional charge. If the Company agrees to allow the Buyer to inspect and test the Goods prior to delivery, the Company will give to the Buyer reasonable notice to attend or be represented.

## **13. ACCEPTANCE**

- 13.1. The Buyer must inspect the Goods immediately upon delivery and must within seven (7) days from the date of inspection give written notice to the Company of any alleged defect in the Goods, or other alleged breach of contract by the Company.
- 13.2. The Buyer waives any claim for shortage of any Goods delivered, loss or errors in delivery or errors in despatch and invoicing if a claim in respect of that shortage, loss or error has not been received by the Company within 7 days from the date of despatch of the Goods to the Buyer.

## 14. RE-STOCKING FEES

- 14.1. No Goods may be returned to the Company for credit unless prior agreement has been given by the Company and then will only be accepted under the following conditions:
- 14.1.1. freight and packing are prepaid and packing list enclosed with the Goods; and
  - 14.1.2. the Goods are in new condition and are approved, on receipt, by the Company's quality controller.
- 14.2. Credit will only be allowed on the original invoiced price less a restocking fee of twenty (20) per cent of that price.
- 14.3. No credit will be allowed for non-standard, specifically procured Goods or second hand Goods.

## 15. DAMAGE OR LOSS IN TRANSIT

- 15.1. The Company 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 by any person (whether or not the Company is legally responsible for the person who caused or contributed to that loss or damage).
- 15.2. The Company will assist the Buyer in making a claim on a carrier if the Buyer:
- 15.2.1. notifies the Company and the carrier in writing immediately after loss or damage is discovered on receipt of the Goods; and
  - 15.2.2. lodges a claim for compensation on the carrier within three (3) days of receipt of the Goods.

## 16. SPECIFICATIONS

- 16.1. Subject to clause 16.2, all Goods are as described on the order accepted by the Company and the description on that order prevails over all other descriptions including any specification or enquiry of the Buyer.
- 16.2. The Company will not be taken to have agreed to comply with any specifications or drawings referred to in any order unless the specifications or drawings have been produced to the Company prior to the delivery of Goods and are signed by the Company. The Company may make such minor changes to the specifications as circumstances require, or will in the judgement of the Company be improvements, and such changes will not affect the enforceability of the contract.

## 17. PRODUCT DESIGN

The Company engages in a policy of continuous development and improvement of its products. the Company reserves the right to alter the design and/or specifications of any Goods without notice and without incurring liability.

**18. SAFETY**

- 18.1. The Buyer must comply with and ensure each of its employees and other persons working with, on, near or using any Goods comply with:
- 18.1.1. the instructions and recommendations made in the relevant Operating and Safe Working Hand Book and Service Manual (or similar documents) provided by the manufacturer with such Goods; and
  - 18.1.2. all other written or verbal instructions given by the Company or manufacturer in connection with the safe use, maintenance or operation of the Goods.
- 18.2. The Buyer must indemnify and keep the Company indemnified against all claims of any kind by any person (whether for damage to property or death or personal injury) arising from or in connection with a breach of clause 18.1 by the Buyer.

**19. LIABILITY**

- 19.1. The only conditions and warranties which are binding on the Company in respect of the state, quality or condition of the Goods supplied to the Buyer are those described in clause 20 or those imposed and required to be binding by statute (including the *Competition and Consumer Act 2010*).
- 19.2. Where the Goods supplied are not Goods of a kind ordinarily acquired for personal, domestic or household use or consumption, the Company's liability for failure to comply with a consumer guarantee under the *Australian Consumer Law* (other than a guarantee under section 51, 52 or 53) is limited to any one or more of the following:
- 19.2.1. the replacement of the Goods or the supply of equivalent Goods;
  - 19.2.2. the repair of the Goods;
  - 19.2.3. the payment of the cost of replacing the Goods or of acquiring equivalent Goods; or
  - 19.2.4. the payment of the cost of having the Goods repaired.
- 19.3. The limitation in 19.2 will not apply if the Buyer establishes, in accordance with the *Australian Consumer Law*, that it is not fair or reasonable for the Company to rely on this term, having regard to all the circumstances of the case.
- 19.4. Where Chapter 3, Part 3-2 of the *Australian Consumer Law* does not apply to the supply then, except as set out in clause 20, the Company will not be liable to the Buyer for any liability, (including liability in negligence) loss or damage of whatever nature, consequential or otherwise, however suffered or incurred by the Buyer, caused by or resulting directly or indirectly from the supply, manufacture or failure in performance of the Goods or the

function of any equipment or system to which the Goods are connected or of which they form part.

## 20. GOODS WARRANTY

This clause 20 only applies to Goods sold to the Buyer where Chapter 3, Part 3-2 of the *Australian Consumer Law* does not apply to the supply of the Goods.

- 20.1. The Company warrants that all Goods manufactured by the Company will be free from defects caused by faulty workmanship or faulty materials for either a period of twelve months from the date of despatch to the Buyer or 2000 engine hours, whichever is the lesser. This warranty only applies if notice of the defect is received by the Company within 7 days of the Buyer becoming aware of the defect and prior to the expiration of the 12 month period.
- 20.2. The warranty in clause 20.1 does not apply in any of the following cases:
- 20.2.1. defect arising from materials supplied by the Buyer or from a design requested by the Buyer;
  - 20.2.2. defects arising from:
    - 20.2.2.1. fair wear and tear;
    - 20.2.2.2. damage or injury caused by lack of care or insufficient maintenance by the Buyer;
    - 20.2.2.3. improper use or installation of the Goods; or
    - 20.2.2.4. alterations or repairs (not made by the Company) to the Goods;
  - 20.2.3. defects arising from an event outside of the Company's control such as fire, flood, earthquake or other natural calamity, motor vehicle or other accident, strike, civil unrest, terrorism or war;
  - 20.2.4. to consumable parts or wearable parts;
  - 20.2.5. if the Goods have been used for more than one ten hour shift per day.
- 20.3. The Company's obligation under this warranty is limited to repairing or exchanging F.O.B. factory, any part, assembly or portion of the Goods found to be defective.
- 20.4. The Company assumes no responsibility for the labour costs involved in the removal of defective parts, installation of new parts or related service charges and the Buyer must pay these costs on demand.
- 20.5. The Company may, but is not obliged to, repair or replace defective parts on site (of the Buyer).

- 20.6. The Company may require the return of the defective part or Goods (transportation prepaid by the Buyer) to establish the claim.
- 20.7. The Company provides no warranty of any kind for Goods which are not manufactured by the Company. Those Goods may come with a warranty from the manufacturer and the Buyer must satisfy itself about the extent or availability of any such manufacturer's warranty before ordering the Goods.

## 21. DETERMINATION AND DAMAGES

- 21.1. If:
- 21.1.1. any distress, execution or other legal process is levied upon any of the Buyer's assets; or
  - 21.1.2. the Buyer enters into any arrangement or composition with its creditors, commits any act of bankruptcy or being a company, a controller (as defined in the *Corporations Act*) is appointed to the whole or any part of its assets, enters into liquidation or has a winding up petition presented against it or calls a meeting of its creditors; or
  - 21.1.3. payment for Goods is not made when due; or
  - 21.1.4. the Buyer breaches any material provision of the contract,
- then, without prejudice to its rights under any other clause or at law, the Company may (but is not bound to do so):
- 21.1.5. terminate the contract; and/or
  - 21.1.6. suspend delivery to the Buyer of all or any outstanding orders; and/or
  - 21.1.7. require payment on delivery for all Goods delivered or to be delivered after the relevant event; and/or
  - 21.1.8. require immediate payment for any Goods delivered and not paid for by the Buyer prior to the event.
- 21.2. If the Company terminates the contract in accordance with clause 21.1 or there is any repudiation of the contract by the Buyer, the Company may recover damages from the Buyer including, but not limited to:
- 21.2.1. the value of any work completed or goods manufactured at the date of determination;
  - 21.2.2. the value of any work begun or goods begun to be manufactured but not completed at the date of determination including the costs of material, labour, overheads and profits in connection with them; and



21.2.3. the sum representing any further profit which the Company would have made on the contract but for its determination.

21.3. A certificate signed by the Company's then accountant as to the damages recoverable under clause 21.2 is prima facie evidence of those damages.

## 22. SET OFF

The Buyer may not withhold or set off payment of any amount due to the Company under the contract whether in respect of any claims of the Buyer in respect of faulty or defective Goods or any other reason.

## 23. FORCE MAJEURE CLAUSE

In the event of:

23.1. war, invasion, act of foreign enemy hostilities (whether war has been declared or not), civil war, rebellion, revolution, insurrection or military or usurped power; or

23.2. any change in statute, rules or regulations;

23.3. any order or requisition issued by any government department, council or other duly constituted authority; or

23.4. strikes, lockouts, breakdowns of plant or any other causes (whether or not of a like nature) beyond the Company's control,

the Company will be relieved of its obligations under the contract wherever and to the extent to which the fulfilment of such obligations is prevented, frustrated or impeded as a consequence of any such event.

## 24. PASSING OF RISK, RETENTION OF TITLE AND PPS

24.1. For the purpose of this clause 24:

"**Excluded Interest**" means any mortgage, charge or other encumbrance over real property or personal property (tangible or intangible) that is not a Security Interest, including non-consensual liens and mortgages over real property;

"**PPSA**" means the Personal Properties Securities Act 2009 (Cth);

"**PPS Register**" means the Personal Property Securities Register;

"**Purchase Money Security Interest**" has the same meaning as under the PPSA;

"**Security Interest**" has the same meaning as under the PPSA.

- 24.2. The Goods supplied by the Company are at the Buyer's risk immediately on delivery to the Buyer or into the custody of the carrier or anyone acting on the Buyer's behalf whichever is the sooner.
- 24.3. Whilst the risk in the Goods passes as set out in clause 24.2, legal and equitable title remains with the Company until payment in full of all amounts owed by the Buyer to the Company is received by the Company. Payment will not be deemed to be received until any cheque in payment has been honoured.
- 24.4. Until the Company has received payment in full of all amounts owed by the Buyer to the Company, it reserves the following rights:
- 24.4.1. the right to enter the Buyer's premises and retake possession of the Goods;
  - 24.4.2. the right to keep or resell any Goods repossessed under clause 24.4.1; and
  - 24.4.3. any other rights it may have at law or under the PPSA.
- 24.5. The Buyer acknowledges that the Company has:
- 24.5.1. a Purchase Money Security Interest which attaches over the Goods and their proceeds until the Company has received payment for the Goods in full; and
  - 24.5.2. a Security Interest over the Goods and their proceeds in relation to other amounts owed by the Buyer to the Company.
- 24.6. The Company may register its Purchase Money Security Interest and Security Interest on the PPS Register established by the PPSA and, where necessary, amend the registration.
- 24.7. The Buyer must not grant any other person a Security Interest in respect of the Goods or their proceeds.
- 24.8. The Buyer must now allow an Excluded Interest to exist over the Goods.
- 24.9. The Buyer agrees to do anything (such as obtaining consents, signing and producing documents, producing receipts and getting documents completed and signed) at any time which the Company asks and considers necessary for the purpose of:

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- 24.9.1. ensuring that a Security Interest created under the contract is enforceable, perfected and otherwise effective; and
- 24.9.2. enabling the Company to apply for any registration, or give any notification, in connection with a Security Interest created under the contract so that the Security Interest has the priority required by the Company,
- including anything the Company reasonably asks the Buyer to do in connection with the PPSA.
- 24.10. To the extent permitted by law, if the PPSA applies, the Buyer irrevocably waives any rights the Buyer may have to:
- 24.10.1. receive notices or statements under sections 95, 121(4), 125, 130, 132(3)(d), 132(4) and 135 of the PPSA;
- 24.10.2. redeem the Goods under section 142 of the PPSA;
- 24.10.3. reinstate the contract under section 143 of the PPSA; and
- 24.10.4. receive a verification statement (as defined in the PPSA).
- 24.11. Nothing in this clause prevents the Company from taking action against the Buyer at any time to recover amounts owing to the Company.
- 24.12. Until the Company has received payment in full of all amounts owed by the Buyer to the Company:
- 24.12.1. the Buyer takes the Goods as bailee for the Company;
- 24.12.2. the Buyer must:
- 24.12.2.1. insure the Goods against all usual risks to their full replacement value;
- 24.12.2.2. note the interest of the Company on that insurance policy; and
- 24.12.2.3. receive on trust for and pay to the Company any insurance monies received by the Buyer in respect of Goods;
- 24.12.3. the Buyer must, where reasonably possible, store each delivery of Goods separately, clearly identified as the Company's property and in a manner to enable the Goods to be identified and cross-referenced to particular invoices;
- 24.12.4. the Buyer may only sell, use or part with possession of Goods in the ordinary course of its business on the following conditions:
- 24.12.4.1. any sale will be as fiduciary agent for the Company; and

- 24.12.4.2. that part of the proceeds of sale that equates to the amount owing by the Buyer to the Company for those Goods will be received by the Buyer on trust for the Company and the Buyer must account to the Company for those proceeds; and
- 24.12.4.3. the agency will only extend to the obligation to account for proceeds and the Company will not be bound by any contract between the Buyer and the Buyer's purchaser; and
- 24.12.5. if the Buyer uses the Goods in a manufacturing or a value added process of its own or a third party, then the Buyer will hold that part of the proceeds of the manufacturing or value added process as relates to the Goods on trust for the Company. Such part will be deemed to equal in dollar terms the amount owing by the Buyer to the Company for those Goods at the time of the receipt of the proceeds.
- 24.13. Without limiting the generality of the Company's rights in this clause 24, if payment for the Goods is not made by the Buyer when due or the Company terminates the contract under clause 21, then the Buyer must return all Goods to the Company on demand. If the Buyer does not return all Goods to the Company within 48 hours of receipt of the demand, the Company may for the purposes of recovery of possession of the Goods, enter forcibly, if necessary, upon any premises where the Goods are stored or where they are reasonably thought to be stored and may repossess, remove and resell the Goods.
- 24.14. The Buyer is liable for all costs associated with the exercise by the Company of its rights under this clause 24, including without limitation the cost of registering any Security Interest on the PPS Register, which costs are payable on demand.
- 24.15. These Standard Conditions constitute a security agreement for the purposes of the PPSA.

## 25. CONFIDENTIAL INFORMATION

- 25.1. "**Confidential Information**" means all price lists, terms and conditions of trade, promotional strategies and information about the Goods supplied by the Company which may be disclosed by the Company to the Buyer at any time but does not include information which:
- 25.1.1. is or has become publicly available otherwise than due to disclosure in breach of these Standard Conditions; or
- 25.1.2. is received from a third party and was not acquired directly or indirectly from either party in breach of an obligation of confidence.
- 25.2. The Buyer must:
- 25.2.1. only use the Confidential Information for the benefit of the Company and for the purpose of ordering Goods from the Company; and

- 25.2.2. keep the Confidential Information confidential except for disclosures required by law or to employees who have been directed and who agree to keep the Confidential Information confidential; and
- 25.2.3. ensure that any employee to whom the Buyer discloses the Confidential Information keeps the Confidential Information confidential and only uses it for the benefit of the Company and for the purpose of ordering Goods from the Company; and
- 25.2.4. return any Confidential Information on request to the Company.

## **26. JURISDICTION**

- 26.1. These Standard Conditions and each contract are subject to the law of Queensland and the Company and the Buyer agree to submit to the jurisdiction of the Court of the State of Queensland.