



# Terms & Conditions Of Sale

## 1. DEFINITIONS

1.1 In these Conditions:

- (1) "Agreement" means the agreement between CW PRODUCTS and the Buyers consisting of the Purchase Order, these conditions and any terms agreed in writing by the parties;
- (2) "Buyer" means the entity with whom CW PRODUCTS contracts to supply the Goods;
- (3) "Conditions" means the terms and conditions contained in this document and includes those terms, if any, imposed by law that cannot be excluded;
- (4) "Goods" means goods sold by CW PRODUCTS pursuant to the Agreement;
- (5) "GST" means GST as defined in A New Tax System (Goods and Services Tax) Act 1999 as amended from time to time or any replacement or other relevant legislation and regulations;
- (6) "Purchase Order" means the Buyer's order to purchase the Goods to which these Conditions apply; and
- (7) "CW PRODUCTS" means CW PRODUCTS ABN 19 810 045 945, its successors and assigns.

## 2. AGREEMENT

- 2.1 The Agreement is the entire agreement between CW PRODUCTS and the Buyer for the supply of the Goods to the Buyer.
- 2.2 Any variation to the Agreement must be in writing signed by CW PRODUCTS.
- 2.3 These Conditions replace any standard terms contained in any document issued by the Buyer.
- 2.4 The Agreement does not create or evidence an agency, partnership, joint venture, or the relationship of employer and employee.
- 2.5 If anything in these Conditions is or becomes for any reason unenforceable, illegal or void then it is severed and the rest of these Conditions remain in force. If anything in these Conditions is unenforceable, illegal or void in 1 jurisdiction but not in another jurisdiction, it is severed only in respect of the operation of these Conditions in the jurisdiction where it is unenforceable, illegal or void.

## 3. PRICE

- 3.1 Unless otherwise agreed in writing by CW PRODUCTS, the price payable by the Buyer for the Goods is the net price of the Goods only, FOB point of shipment, is quoted, advertised or otherwise indicated by CW PRODUCTS ("Price").
- 3.2 The Price does not include the cost of insurances, shipping expenses, customs duties, Federal, State and local taxes, duties and imposts, and other costs and expenses. These are payable by the Buyer in addition to the Price where applicable.
- 3.3 Unless GST is expressly included, the price payable for any supply made under or in connection with these Conditions does not include GST.
- 3.4 To the extent that any supply is a taxable supply, the GST exclusive consideration otherwise payable for that supply is increased by an amount equal to that consideration multiplied by the rate at which GST is imposed in respect of the supply, and is payable at the same time.
- 3.5 Each party agrees to do all things, including providing tax invoices and other documentation, that may be necessary to enable the other party to claim any input tax credit, adjustment or refund in relation to any amount of GST paid or payable.

## 4. PURCHASE ORDERS

- 4.1 All Purchase Orders must be made in writing by the Buyer and will be subject to acceptance by CW PRODUCTS.
- 4.2 CW PRODUCTS reserves the right to accept or reject in its absolute discretion any Purchase Order it receives.
- 4.3 Any quotation issued by CW PRODUCTS is not an offer or obligation to sell but an invitation to treat only. A quotation expires 30 days from the date of quotation unless agreed in writing by CW PRODUCTS.

## 5. DELIVERY DAYS

- 5.1 CW PRODUCTS will make every effort to deliver the Goods in the shortest possible time.
- 5.2 CW PRODUCTS will have no liability whatsoever (including liability for negligence) for any loss or damage consequential or otherwise if the Goods are not delivered or delivery is delayed.
- 5.3 Delayed delivery will not entitle the Buyer to cancel a Purchase Order.
- 5.4 Any statement made by CW PRODUCTS as to the date for delivery of the Goods is an estimate only.

## 6. ACCEPTANCE OF GOODS

- 6.1 The Buyer must inspect the Goods upon delivery.
- 6.2 The Buyer must give CW PRODUCTS written notice within 14 days of delivery of any matter or thing (including short delivery) that the Buyer alleges is not in accordance with the Agreement. If such notice is not given then to the extent permitted by law the Buyer will be deemed to have accepted the Goods and must pay for them in accordance with the Agreement.

## 7. RETURNS

- 7.1 CW PRODUCTS may authorise returns of Goods within 30 days of delivery by issuing the Buyer with a Return Authorisation Number in writing.
- 7.2 CW PRODUCTS will only accept returns accompanied by a Return Authorisation Number.
- 7.3 The Buyer must prepay all costs of returning Goods, including CW PRODUCTS restocking fee, which is 10% of the Price. All Goods returned must be insured, packed in their original packaging and carriage must be prepaid by Buyer.

## 8. PAYMENT

- 8.1 Should an account facility be made available to the Buyer by CW PRODUCTS, the Buyer must pay for the Goods within 30 days from the date of CW PRODUCTS invoice to the Buyer. In the absence of an account facility being made available, the Buyer must either, at the option of CW PRODUCTS, make payment at the time of placing the Purchase Order or on demand.
- 8.2 Payment for the Goods must be made in cleared funds.
- 8.3 Any overdue payment will attract interest until the time of payment at a rate equal to 3 percentage points above Westpac Banking Corporation's Indicator Lending Rate. Interest accrues on a daily basis.
- 8.4 Should the Buyer default in the payment of any monies due under this Agreement then all monies due to CW PRODUCTS shall at the option of CW PRODUCTS immediately become due and payable.
- 8.5 Any collection costs incurred by CW PRODUCTS in connection with recovering any outstanding monies, including debt collection agency fees and legal costs (calculated on a solicitor and client basis) shall be reimbursed by the Customer.
- 8.6 The Buyer is not entitled to defer, offset or withhold payment in whole or in part for any reason unless agreed to by CW PRODUCTS in writing.
- 8.7 If the Buyer is the trustee of a trust it enters into this Agreement in its capacity as trustee of the trust and it warrants to CW PRODUCTS that the trust deed establishing the trust allows the trustee to be indemnified by the trust.
- 8.8 Where the Goods are supplied to the Buyer on credit, the Buyer must (to secure the performance by the Buyer of its obligations under this Agreement), if requested in writing by CW PRODUCTS, provide an irrevocable guarantee for an amount to be reasonably determined by CW PRODUCTS from a financial institution, and in a form approved by CW PRODUCTS.
- 8.9 Time is of the essence in respect of the Buyer's obligation to make payment for the Goods.

## 9. RISK AND TITLE

- 9.1 Risk in the Goods will pass to the Buyer immediately upon delivery.

- 9.2 Property in the Goods will not pass to the Buyer until payment for all goods supplied by CW PRODUCTS to the Buyer have been paid in full:

- (1) The Buyer may only sell the Goods as CW PRODUCTS fiduciary agent for the account of CW PRODUCTS and the proceeds of such sale (including any proceeds from insurance claims) will be the property of CW PRODUCTS to be held by the Buyer for and on behalf of CW PRODUCTS in a separate bank account;
  - (2) The Buyer must store the Goods in a proper manner that clearly identifies the Goods as the property of CW PRODUCTS; and
  - (3) The Buyer must not bail, pledge, mortgage, charge, grant a lien over, lease or assign the Goods, other than in accordance with clause 9.2(1).
- 9.3 The Buyer irrevocably authorises CW PRODUCTS at any time to enter any premises upon which Goods the subject of this clause are stored to enable CW PRODUCTS to inspect the Goods and, if the Buyer has breached the Agreement, reclaim possession of the Goods.
  - 9.4 The Buyer acknowledges and agrees that CW PRODUCTS may recover the price of the Goods by legal action if payment for the Goods is overdue, notwithstanding that property in the Goods has not passed to the Buyer.

## 10. EXCLUSION OF IMPLIED CONDITIONS AND WARRANTIES AND LIMITATION OF LIABILITY

- 10.1 Subject to clause 12 and to the extent permitted by law, these Conditions exclude all other conditions, warranties, liabilities or representations in relation to the Goods.

## 11. BUYER'S WARRANTY

- 11.1 The Buyer warrants that the Goods are purchased by the Buyer for the purposes of re-sale in the course of the Buyer's business or for using them or incorporating them into other products in the course of such business and not for the Buyer's personal, domestic or household or consumption.
- 11.2 If the Buyer re-sells the Goods, the Buyer must transfer to the purchaser of those Goods the benefit of CW PRODUCTS Warranty contained in clause 12, subject to the conditions contained in that clause. The buyer is not otherwise entitled to make any other representation or warranty to any other person on behalf of CW PRODUCTS.

## 12. CW PRODUCTS WARRANTY

- 12.1 Subject to any express warranty or exception in this Agreement CW PRODUCTS warrants that the Goods will be free from defects in materials and workmanship under normal and proper use for a period of 5 years from the date of manufacture or if this date is not ascertainable 5 years from the date of invoice to the Buyer. The warranty period with respect to motors, controls and accessories used for residential garage doors and residential gates is, however, 2 years from the relevant date of manufacture or invoice and 1 year for electronics, solar panels and batteries.
- 12.2 To the extent permitted by law, CW PRODUCTS liability for any breach of clause 12.1 will be limited (at CW PRODUCTS option) to repairing, replacing, or refunding the price of the Goods, or the supply of equivalent Goods. CW PRODUCTS will not be liable for any consequential damage or loss incurred during or following installation or reinstallation of the Goods.
- 12.3 The Buyer is responsible for all installation, reinstallation and freight costs in connection with the repair, replacement or refund of the Price of the Goods, pursuant to this warranty.
- 12.4 Property in the Goods or parts of the Goods that are replaced pursuant to this warranty will be retained by or otherwise pass to CW PRODUCTS.

- 12.5 This warranty does not apply:

- (1) if usage, selection, adaptation, installation, operation or wiring of the Goods or any electrical connections

- are not in accordance with the manufacturer's written selection guides, installation, operating instructions, professional standards and wiring diagrams;

- (2) if the Goods have been opened, dismantled or returned with clear evidence of abuse, negligent use or other damage;
- (3) if the Goods have been used to perform functions other than the functions they were designed for, being, in summary, motorising windows, window coverings, retractable shading devices, doors, door coverings, gates, garage doors and protection screens and any other functions that CW PRODUCTS notifies to the Buyer in writing in its absolute discretion;
- (4) if the Goods are used with any inappropriate products, software or other goods that have not been previously approved in writing by CW PRODUCTS;
- (5) To unauthorised maintenance or modifications to the Goods;
- (6) Any damage to Goods caused by an external source regardless of its nature (including damage caused by penetration by liquid);
- (7) To the extent that CW PRODUCTS specifically notifies the Buyer that it does not apply;
- (8) To batteries or other consumables; or
- (9) To removal, reinstallation or maintenance costs of the Goods.

## 13. PRIVACY

- 13.1 Where the Goods are supplied to the Buyer on credit the Buyer irrevocably authorises CW PRODUCTS, its Employees and Agents to make such enquiries necessary to investigate the creditworthiness of the Buyer with respect to the supply of such credit including (but not limited to) making enquiries of, and exchanging information (including some personal information) with, the Buyer's trade referees, bankers and credit providers, and with credit reporting agencies ("information sources") and the Buyer authorises such information sources to disclose to CW PRODUCTS such information in their possession concerning the Buyer that is requested by CW PRODUCTS.
- 13.2 For the purposes of the Privacy Act 1988 where the Buyer is an individual, CW PRODUCTS declares that it collects information about the Buyer to assist in promoting and selling its products and services. CW PRODUCTS does not disclose information about the Buyer to any person except as required in the course of providing its products or services for the ordinary administration of its business. If the Buyer does not want to receive promotional material from CW PRODUCTS, he or she can inform CW PRODUCTS. The Buyer can also request access to his or her personal information by making a written request to CW PRODUCTS.

## 14. OWNERSHIP OF BUYER

- 14.1 Buyer must notify CW PRODUCTS within 7 days of any alteration to its registered particulars.
- 14.2 Where Goods are supplied to the Buyer on credit, Buyer must notify CW PRODUCTS in writing within 14 days of any:
  - (1) addition or alteration to the shareholding or directorship of Buyer (if Buyer is a company);
  - (2) addition or alteration to the partnership (if Buyer is a partnership); or
  - (3) intended sale of the Buyer's business. ("Ownership Changes").
- 14.3 If there are any Ownership Changes in the Buyer, CW PRODUCTS may, in its absolute discretion, withdraw credit facilities for that Buyer.

## 15. GOVERNING LAW AND JURISDICTION

- 15.1 The law of South Australia governs the Agreement.
- 15.2 The parties submit to the non-exclusive jurisdiction of the courts of South Australia and the Federal Courts of Australia.