

Terms of Sale

1. SALE AGREEMENT

These Terms of Sale, together with the Tax Invoice We provide to You, form the Sale Agreement between You and Us. Any terms contained in any document supplied by You, including any terms in Your purchase order, will not form part of the Sale Agreement.

2. DEFINITIONS

When We refer to the following terms in this document:

"Account Customer" means a person or entity that has an approved and current commercial trading account with Alliance Safety Equipment Pty Ltd.

"ACL" means the Australian Consumer Law which is contained in Schedule 2 of the Competition and Consumer Act 2010 (Cth).

"Cash Customer" means a person or entity who is required to pay the invoice by an approved cash payment method.

"Claims" means any claims, demands, writs, summonses, actions, suits, proceedings, judgments, orders, decrees, damages, costs, losses and expenses of any nature whatsoever.

"Consumer" means a consumer as that term is defined in the ACL.

"Consumer Contract" has the same meaning as in the ACL.

"Consumer Guarantees" means the guarantees relating to the supply of goods and services contained in the ACL.

"Credit Application" means any application for a Commercial Credit Account completed by You.

"Credit Account" means any billing arrangement We have extended to You upon Our approval of the Credit Application.

"Environmental Laws" means any statute, regulations or other laws made or issued by a regulatory body or government regulating or otherwise relating to the environment including without limitation the use or protection of the environment.

"Goods Charge" or **"Goods Charges"** means the rates and charges payable by You for the individual article or unit that You are purchasing.

"New Replacement Cost" means the cost to replace the Equipment with a new item of the same equipment, or if the same equipment is not available, then the cost to replace the Equipment with a new item of equipment of the same quality, function and capacity.

"Non Excludable Provision" has the meaning set out in clause 15.3.

"PMSI" means a 'purchase money security interest' as defined in the PPSA.

"PPSA" means the Personal Properties Securities Act 2009 (Cth) (as amended) and any other legislation and regulations in respect of it, and the following words in clause 14 and 26 have the respective meanings given to them in the PPS Act: *financing change statement, financing statement, purchase money security interest (or "PMSI"), register, registration and security interest.*

"Quotation" means a quotation given by Us to You detailing the Equipment and any other charges, subject at all times to these Terms and Conditions.

"Regulatory Authority" means any public authority or government agency responsible for regulating the performance of electrical works.

"Related Body Corporate" has the same meaning as in the Corporations Act 2001.

"Relevant Documents" means:

- a) the Credit Application; and
- b) any Guarantee, Indemnity & Charge which guarantees all monies owing by You to Us.

"Small Business Contract" has the same meaning as in the ACL (as amended).

"Transport Movement" means the period of time during a delivery in which Equipment is being transported by road, air or sea.

"We/Us/Our" means Alliance Safety Equipment Pty Ltd (ABN 55 977 478 216) any Related Body Corporate of Alliance Safety Equipment Pty Ltd and their successors and assigns.

"You/Your" refers to the person, firm, organisation, partnership, corporation, trust or other entity purchasing products and/or services from Us. The reference to "You/Your" includes any of your employees, agents and contractors.

3. QUOTATION

Any quotation for Goods and/or Services prepared by us is not an offer by us and may be withdrawn or altered without notice. Unless we withdraw it, a quotation is valid for the period stated in it, or if no period is stated, for 30 days after the date of the quotation.

4. PRICE AND COSTS

4.1 Unless we agree in writing and subject to any quotation given under clause 3, the price of the Goods and/or Services will be the price we usually charge and in accordance with subclause (4.2) below. Any price concession we provide to you is conditional on your full compliance with these terms.

4.2 Prices quoted are in Australian Dollars unless stated otherwise and are those applying at the date of issue of quotation subject to adjustment (including a proportional adjustment for fixed costs and profit) for any variation in:

- a) the cost of labour, material or transport;
- b) exchange rates, customs duty, freight, shipping expenses, sorting and tracking charges or insurance;
- c) supplier's prices;
- d) the amount of work required to produce and/or procure the Goods due to a variation in in specification approved by You and Us;
- e) any other charges affecting the cost of the Goods;

4.3 The price excludes GST unless specified.

4.4 We are not responsible for any freight charges related to the service of Your Equipment. Any reference to freight charges contained in the quotation is an estimate. We are not responsible for any difference that may occur between freight estimates contained in a Quotation and actual freight charges applicable at the time of shipment, and You shall incur and be responsible for all costs associated therewith.

5. ORDERS

- 5.1 You can place orders by electronic data interchange (EDI), telephone, in writing or in person.
- 5.2 We reserve the right to accept or reject orders placed by You. We will communicate any non-acceptance of an order to You within 3 business days of receipt of order.
- 5.3 Orders cannot be modified or cancelled after acceptance by Us except with our written consent.
- 5.4 All descriptions and specifications in Quotations and Orders are those of the original manufacturers and you may not rely on their accuracy. Accordingly, any such description shall not form part of this agreement.

6. DELIVERY

- 6.1 If a delivery date is specified, that date is an estimate only and Subject at all times to clause 12.1(a), we are not liable for any loss or damage (including any consequential loss or damage) arising from late delivery.
- 6.2 You must accept and pay for the Goods and/or Services even if the delivery is late.
- 6.3 The supply of the Goods is subject to availability. If We are unable to supply Your total order, We may deliver the order in instalments and You must pay an amount for that instalment as notified by Us on the invoice.
- 6.4 Where you nominate to collect the Goods from Us or use Your own carrier, delivery is deemed to have occurred when we notify You that the Goods are ready to collect and/or be dispatched.
- 6.5 In relation to Us providing the Services and/or supplying the Goods, you must provide Us with access to Your premises for the purpose of supplying the Goods and/or providing the Services at such times as reasonably required by Us, and for this purpose You must ensure that your premises are a safe working environment for Us, our employees and agents to supply the Goods and/or provide the Services.
- 6.6 You must indemnify Us against any loss or damage suffered by Us or as a result of Us becoming liable to any third party (directly or indirectly) as a result of Our or Our employees or agents entering the premises for delivery or any other of Your premises for delivery or any other of your premises and delivering the Goods and/or providing the Services.

7. OTHER CHARGES

In addition to the Cost of Goods, You agree to pay:

- a) the reasonable costs of transportation of the Goods;
- b) if You require Us to deliver, install or commission the Goods, the cost of delivery, installation or commissioning, as detailed in the Quotation. Such charge may include a waiting fee (charged at cost) in addition to the delivery or installation fee if the nominated time for delivery or installation of the Equipment is delayed by You;
- c) any stamp duty or GST arising out of this Sales Agreement; and
- d) if You require operational guidance or training on the use of the Goods and Our staff are available to provide this, the cost for the provision of these services at rates agreed with Us.

8. PAYMENTS FOR CASH CUSTOMERS

Cash Customers are required to pay Cash on Delivery for all stocked Goods. Goods which are to be ordered in or custom made, must be paid for at the time of placing an order.

9. PAYMENTS FOR ACCOUNT CUSTOMERS

- 9.1 We will issue an invoice to You at the time that We notify You that the Goods are ready to collect and/or be dispatched.
- 9.2 You must pay all Goods, other charges and costs that become due and payable under this Sales Agreement by the due date on the Invoice.
- 9.3 If You do not pay the invoice in full by the payment due date, We may charge, in addition to any other costs recoverable under this Sale Agreement:
 - a) Interest, calculated monthly, on the total outstanding balance. The interest rate used to calculate the interest payable for the month is the 90-day Bank Bill Swap Rate published on the first business day of that month plus 2%; and
 - b) any costs and expenses (including any commission payable to any commercial or mercantile agents and legal costs) incurred by Us in recovering any unpaid amounts under this Sale Agreement.

10. YOUR OBLIGATIONS TO US

You agree that you will undertake Your own due diligence as to the suitability of any Goods to Your needs and requirements.

11. DISCREPANCIES AND RETURN OF GOODS

- 11.1 Subject to clause 12.1(a), if there is a discrepancy between Goods ordered and Goods delivered, You must notify us in writing within seven (7) business days from date of delivery to You, otherwise the Order will be deemed to have been delivered correctly in all respects and accepted by You. Written notice must give details of: (a) invoice number, (b) invoice date and (c) reported discrepancy. For the avoidance of doubt, you are responsible for all costs in relation of the return of Goods to Us.
- 11.2 Goods ordered in or custom made for You, will not be accepted for return unless the Goods are defective.
- 11.3 Stocked goods will only be accepted for return if the Goods are unworn, unused, undamaged and in their original packaging. A restocking fee of 15% applies to all returns unless the Goods are defective.
- 11.4 All customised products and non-stocked items will not be considered for return unless the item is faulty.

12. WARRANTIES

- 12.1 Implied warranties:
 - a) We acknowledge that where the supply of Goods and/or Services are "consumer" supplies, under applicable State, Territory and Commonwealth law(s) (including, without limitation, the *Competition and Consumer Act 2010 (Cth)* ("**Competition and Consumer Act**"), certain statutory express and implied guarantees and warranties, including, without limitation, the statutory guarantees under the *Competition and Consumer Act* will be implied into these terms (**Non-Excluded Guarantees**).
 - b) We further acknowledge that nothing in these terms purports to modify or exclude the Non-Excluded Guarantees.

c) Except as expressly set out in these terms or in respect of the Non-Excluded Guarantees, we make no warranties or other representations under any contract with you or these terms. Our liability in respect of these warranties is limited to the fullest extent permitted by law.

12.2 We are not the manufacturer of the Goods (as defined in under the Competition and Consumer Act), and We extend to You the benefit of the warranty, if any is provided to Us in relation to the particular Goods supplied by Us to You pursuant to these terms.

12.3 The warranty given by Us in this Clause 12 are given by Alliance Safety Equipment Pty Ltd (ABN 55 977 478 216). All Goods subject to warranties must be returned to the manufacturer, or Us or our representative for inspection and assessment at Your cost.

12.4 Our Goods come with guarantees that cannot be excluded under the Australian Consumer Law. If a failure with the Goods does not amount to a major failure, you are entitled to have the failure rectified in a reasonable time. If this is not done, You are entitled to a refund for the Goods.

13. RISK AND TITLE

13.1 The risk in Goods shall pass to You immediately upon collection by You or Your nominated carrier from our warehouse.

13.2 Title in the Goods shall not pass to You until:

- a) You have paid us all amounts owing (and all cheques or negotiable instruments have been paid); and
- b) You have met all other obligations due by You to Us in respect of these terms and all other contractss with Us and You,

and until the above obligations have been satisfied, you acknowledge and agree that:

- c) You hold the Goods as bailee only;
- d) You must store the Goods supplied in such a way that it is clear that they are our property;
- e) You irrevocably authorise Us to enter any premises where the Goods are kept and, if necessary, to use Your name and to act on Your behalf to recover the goods; and
- f) If You sell the Goods, you acknowledge that such sale is by You as agent for and on behalf of Us and you must hold the proceeds of such a sale in a separate account on trust for Us and identified as such in your books.

14. PPSA

14.1 You:

- i) acknowledge that We may register any actual or impending PMSI under the PPSA in respect of all Goods; and
- ii) consent to Us registering our PMSI under the PPSA and will do all things reasonably necessary to assist Us register Our security interest.

14.2 We are responsible for:

- i) the preparation and registration of the financing statement or financing change statement; and

- ii) payment of any fees associated with the registration, and

and You waive the right to receive from Us verification of the registration pursuant to section 157(3)(b) of the PPSA.

14.3 If You transfer the Goods to Your agent, contractor, subcontractor or any third party, and the transfer is a security interest under the PPSA, You agree that You will protect Our interests in the Goods by:

- a) registering a security interest itself; or
- b) assigning, by this clause, to Us all rights as bailor to enforce against an agent, contractor or subcontractor.

14.4 You have an obligation to give Us notice if another party with a security interest in the Goods seizes or otherwise deals with Our PMSI in the Goods.

14.5 If you grant any security interest in the Goods to another party, that other party must acknowledge the priority of Our PMSI.

14.6 The parties agree that neither party is required to give notice to the other under the PPSA unless the obligation to give the notice cannot be excluded.

15. INDEMNITIES AND EXCLUSION OF LIABILITIES

15.1 Except as expressly provided to the contrary in this Sale Agreement, all guarantees, terms, conditions, warranties, undertakings, inducements or representations whether express or implied, statutory or otherwise, relating to this Sale Agreement or its subject matter are excluded to the maximum extent permitted by law.

15.2 Nothing in this Sale Agreement excludes, restricts or modifies any right or remedy, or any guarantee, term, condition, warranty, undertaking, inducement or representation, implied or imposed by any legislation which cannot lawfully be excluded or limited. This may include the Consumer Guarantees.

15.3 Where We are not able to exclude a guarantee, term, condition, warranty, undertaking, inducement or representation imposed by legislation in relation to this Sale Agreement, ('Non-Excludable'), and We are able to limit Your remedy for a breach of the Non-Excludable Provision, then Our liability for breach of the Non-Excludable Provision is limited to (at Our election):

- a) In the case of Goods:
 - i) the replacement of Goods or the supply of equivalent Goods;
 - ii) the repair of the Goods;
 - iii) the payment of the cost of replacing the Goods or of acquiring the equivalent Goods; or
 - iv) the payment of having the Goods repaired.
- b) In the case of service, the supplying of the services, or the payment of the cost of having the service supplied again.

15.4 Subject to Our obligations under the Non-Excludable Provisions and to the maximum extent permitted by law, Our maximum aggregate liability for all claims under or relating to this Sale Agreement or its subject matter, whether in contract, tort (including without limitation negligence), in equity, under

statute, under an indemnity, is limited to an amount equal to the fees paid by You under this Sale Agreement.

15.5 We will not be liable to You for any consequential, indirect or special loss or damage, loss of actual or anticipated profits or revenue, loss of business, business interruption, wastes costs You have incurred, amounts that You are liable to Your customers for any loss suffered by third parties under or relating to this Sale Agreement or its subject matter, whether in contract, tort (including without limitation negligence), in equity, under statute, under an indemnity, whether or not such loss or damage was foreseeable and even if advised of the possibility of the loss or damage.

15.6 You are liable for and indemnify Us against all liability, claims, damage, loss, costs and expenses (including, without limitation, legal fees, costs and disbursements on a full indemnity basis, whether incurred or awarded against Us and any environmental loss, cost, damage or expense) in respect of:

- a) personal injury;
- b) damage to property; or
- c) a claim by a third party.

Your liability under this indemnity is diminished to the extent that Our breach of the Sale Agreement or Our negligence causes the liability, claims, damage, loss, costs or expenses.

15.7 Each indemnity in this Sale Agreement is a continuing obligation, separate and independent from the other obligations of the parties and survives termination, completion and expiration of this Sale Agreement. It is not necessary for a party to incur expense or make any payment before enforcing a right of indemnity conferred by this Sale Agreement.

15.8 We will not be liable to You for any acts or omissions of any person supplied by Us where that person is acting under Your direction and control and You indemnify Us against all liability, claims, damage, loss, costs and expenses (including, without limitations, legal fees, costs and disbursements on a full indemnity basis, whether incurred or award against Us and any environmental loss, cost, damage or expense) arising from or incurred in connection with such acts or omissions.

16. SECURITY

Except where clause 27 applies:

- a) As security for Your obligations under this Sale Agreement, You hereby charge for the due and punctual payment and performance of those obligations and liabilities, all of Your legal and equitable interest (both present and future) of whatsoever nature held in any and all real property.
- b) Without limiting the generality of the charge in this clause, You agree, on Our request, to execute any documents and do all things necessary required by Us to register a mortgage security or other instrument of security over any real property ("Charged Property") and against the event that You fail to do so within a reasonable time of being so requested, You irrevocably and by way of security, appoint any credit manager or solicitor engaged by Us to be Your true and lawful attorney to execute and register such instruments. You consent to the lodgement by Us of a Caveat noting our interest on the Charged Property.

- c) You will indemnify Us on an indemnity basis against all costs and expenses incurred by Us in connection with the preparation and registration of any such charge and mortgage document.

17. PRIVACY

17.1 We will comply with the Australian Privacy Principles in all dealings with You.

17.2 We may need to collect personal information about You, including but not limited to, Your full name and address, drivers licence details, credit card details, date of birth, and credit or business history. You consent to Us using Your personal information in order to:

- a) fulfill functions associated with the sale of Goods to You, including but not limited to assessing Your credit worthiness, or exercising Our rights under clause 14;
- b) provide services to You;
- c) enter into contracts with You or third parties, and
- d) to market to You and maintain a client relationship with You.

17.3 You also consent to Us disclosing Your personal information:

- a) to any credit provider or credit reporting agency for the purposes of obtaining information about Your consumer or commercial credit or business history or Your commercial activities or credit worthiness; and
- b) to Our service providers, contractors and affiliated companies from time to time to help improve and market Our services to You.

17.4 You have the right to access the personal information We hold about You.

17.5 Copies of our Privacy Policy, Credit Reporting Policy and Trading Terms and Conditions are available upon request or visit www.alliancesafety.com.au

18. FORCE MAJEURE

Neither party will be responsible for any delays in delivery, installation or commissioning due to causes beyond their control including but not limited to acts of God, war, terrorism, mobilisation, civil commotion, riots, embargoes, orders or regulations of governments of any relevant jurisdiction, fires, floods, strikes, lockouts or other labour difficulties, shortages of or inability to obtain shipping space or land transportation.

19. SEVERABILITY

If any part of this Sale Agreement becomes void or unenforceable for any reason, then that part will be severed with the intent that all remaining parts will continue to be in full force and effect and be unaffected by the severance of any other parts.

20. GOVERNING LAW

The Sale Agreement is governed by the laws of Queensland and each party submits to the non-exclusive jurisdiction of the courts of that State in respect of any proceedings arising in connection with the Sale Agreement. Each party waives any objection to the venue of any legal process in these courts on the basis that the process has been brought in an inconvenient forum.

21. ENTIRE AGREEMENT

The covenants and agreements expressed or implied in the Sale Agreement comprise the whole of the agreement between the parties and, except as expressly or otherwise provided, supersede all prior

agreements and understanding, whether verbal or otherwise, between Us and You in relation to the sale of Goods. No additional terms and conditions (including any terms contained in any purchase order supplied by You) apply to the sale of the Goods unless the Sale Agreement is varied in accordance with clause 23.

22. NO RELIANCE

Subject to clauses 15.1 and 15.3, You acknowledge that neither We nor any person acting on Our behalf have made any representation or other inducement to You to enter into the Sale Agreement and You have not entered into the Sale Agreement in reliance on any representations or inducements (including in relation to the purchase of Goods and/or Services) except for those representations contained in this Sale Agreement.

23. VARIATION

To the extent that a variation to this Sale Agreement is not detrimental to You, from time to time, We may vary this Sale Agreement. If We intend to do so, We will give You 28 days' written notice of our varied terms. If You have reasonable grounds to believe the change will be detrimental to Your rights, You may terminate this Sale Agreement without penalty within 28 days of receiving Our written notice. Any other variation of the Sale Agreement must be agreed in writing by You and Us.

24. NO WAIVER OF RIGHTS

Subject to clause 16, no delay or omission by a party to exercise any right, power or remedy available to that party as a result of a continuing breach or default under the Sale Agreement will impair any such right, power or remedy, nor will it be construed to be a waiver of that party's right to take action or make a claim in respect of a continuing breach or default.

25. REVIEW OF YOUR CREDIT APPROVAL

25.1 From time to time We may review any Credit Account We have granted to You without notice.

25.2 We may, at Our discretion, decide to withdraw credit for any reason, including but not limited to if Your circumstances change, You fail to make payments on time or You fail to purchase Goods in accordance with the terms of the Sale Agreement.

26. SIGNING THIS SALE AGREEMENT

26.1 The person signing or accepting the terms of any document which forms part of the Sale Agreement or Relevant Documents for and on behalf of You hereby warrants that he or she has Your authority to enter into the Sale Agreement on Your behalf and grant the security interests in connection with it and is empowered to bind You to the Sale Agreement and each security interest granted in connection with it.

26.2 Except where clause 27 applies, the person signing or accepting the terms of this Sale Agreement indemnifies Us against all losses, costs and claims incurred by Us arising out of the person so signing this Sale Agreement not in fact having such power and/or authority.

27. PROVISIONS OF THIS AGREEMENT EXCLUDED FROM CONSUMER CONTRACTS AND SMALL BUSINESS CONTRACTS

The following provisions will not apply if the Sale Agreement is a consumer contract or a small business contract:

- i) Clause 16 (Security);
- ii) Clause 26.1 (Signing this Agreement); and
- iii) Clause 28 (Assignment).

28. ASSIGNMENT

28.1 We may assign this Sale Agreement to any third party without Your consent (including a Related Body Corporate).

28.2 Where you are an individual acquiring goods or services wholly or predominantly for personal, domestic or household use or consumptions, then we may assign this Sale Agreement to a Related Body Corporate providing that Related Body Corporate has the financial and operational resources to comply with the terms of the Sale Agreement. If You have reasonable grounds to believe the assignment will be detrimental to Your rights, You may terminate this Sale Agreement without penalty by giving Us 28 days written notice that You wish to terminate the Sale