

TERMS AND CONDITIONS OF QUOTATION AND SALE

These are the terms and conditions upon which the Seller sells and quotes for the sale of goods.

I. DEFINITIONS AND INTERPRETATION

I.1 Definitions

In these terms and conditions, unless the context otherwise requires:

- (a) 'Application' in relation to a Buyer means the Thirty Day Commercial Credit Account Application signed by the Buyer which refers to these terms and conditions.
- (b) 'Buyer' means the Person named in the relevant Sales Invoice or Quotation.
- (c) 'Credit Return Authorisation Number' means the number allocated to the Buyer by the Seller to authorise the Buyer to return goods to the Seller in accordance with these terms and conditions.
- (d) 'GST' means the goods and services tax as imposed by the GST Law together with any related interest, penalties, fines or other charges.
- (e) 'GST Amount' means any Payment (or the relevant part of that Payment) multiplied by the appropriate rate of GST.
- (f) 'GST Law' has the meaning given to that term in A New Tax System (Goods and Services Tax) Act 1999, or, if that Act does not exist for any reason, means any Act imposing or relating to the imposition or administration of a goods and services tax in Australia and any regulation made under that Act.
- (g) 'Order' means the Buyer's Order communicated to the Seller by any means but if the Order is for \$200.00 or less a \$20.00 handling charge will apply.
- (h) 'Payment' means any amount payable under or in connection with a Quotation or Sales Invoice including any amount payable by way of indemnity, reimbursement or otherwise (other than a GST Amount) and includes the provision of any non-monetary consideration.
- (i) 'Person' includes an individual, the estate of an individual, a body politic, a corporation, an association (incorporated or unincorporated) and a statutory or other authority.
- (j) 'Purchase Price' means the price for the goods set out in the relevant Quotation or Sales Invoice.
- (k) 'Quotation' means the form of quotation submitted by the Seller to the Buyer in which these terms and conditions are deemed to be incorporated.
- (l) 'Sales Invoice' means the sales invoice issued by the Seller to the Buyer in which these terms and conditions are or are deemed to be incorporated.
- (m) 'Seller' in relation to any Quotation or Sales Invoice means OWGEND PTY LIMITED (ACN 001 869 825) trading as 'Guardian Safety'
- (n) 'Tax Invoice' has the meaning given to that term by the GST Law.
- (o) 'Taxable Supply' has the meaning given to that term by the GST Law.

I.2 Interpretation

- (a) Any special conditions specified on a Quotation or Sales Invoice shall, to the extent they are inconsistent with these terms and conditions, take precedence over these terms and conditions.
- (b) Words importing the singular shall include the plural (and vice versa).

2. GOVERNING TERMS AND CONDITIONS

These are the only terms and conditions which are binding upon the Seller with the exception of those otherwise agreed in writing by the Seller and/or which are imposed by a statute and which cannot be excluded.

3. TERMS OF PAYMENT

Payment to the Seller for goods delivered and accepted is due within 30 calendar days of the end of the month in which the goods are invoiced. If the Buyer fails to make payment in accordance with this clause, all amounts owing by the Buyer to the Seller on any account shall immediately become due and payable. Each outstanding amount shall bear interest at the rate of 10% per annum calculated on a daily basis from the day it falls due until the day it is paid.

4. INSPECTION AND ACCEPTANCE

The Buyer shall inspect all goods upon delivery and shall within 48 hours of delivery give notice to the Seller of any matter or thing by which the Buyer alleges that the goods are not in accordance with the Buyer's order. Failing such notice, subject to any non-excludable condition implied by law, such as those in the Trade Practice Act 1974 (Cth), the goods shall be deemed to have been delivered to and accepted by the Buyer.

5. RETURNS

- (a) Returns will be accepted for faulty or defective goods or any other non-excludable obligations of the Seller set out in Trade Practices Act 1974 (Cth) or similar State or Territory legislation.
- (b) Returns other than those referred to in (a) above, must be approved by the Seller. These authorised returns must be freight prepaid and will only be accepted if they are in a saleable condition. The Seller reserves the right to charge a handling fee equal to 20% of the price of the goods returned under this provision. Products specifically purchased, manufactured, machined or cut to size or to the Buyer's specification are not returnable under any circumstances unless they are of the kind referred to in (a) above.
- (c) The Buyer shall not return any goods without first obtaining from the Seller a Credit Return Authorisation Number.

6. QUOTATIONS

- (a) Unless previously withdrawn, a quotation is valid for 30 days or such other period as stated in it. A Quotation is not to be construed as an obligation to sell but merely an invitation to treat and no contractual relationship shall arise from it until the Buyer's order has been accepted in writing by the Seller.
- (b) The Seller shall not be bound by any conditions attaching to the Buyer's Order or acceptance of a Quotation and, unless such conditions are expressly accepted by the Seller in writing, the Buyer acknowledges that such conditions shall have no force or effect whatsoever.

7. GST

The Seller and the Buyer agree that the Purchase Price is inclusive of GST.

8. PASSING OF PROPERTY AND RISK

- (a) Goods supplied by the Seller to the Buyer shall be at the Buyer's risk immediately upon delivery to the Buyer, into the Buyer's custody or at the Buyer's direction (whichever happens first). The Buyer shall insure the goods from the time of that delivery at its cost against such risks as it deems appropriate, shall note the interest of the Seller on the insurance policy and shall produce a certificate to that effect to the Seller upon request.
- (b) Property in goods supplied by the Seller to the Buyer under these terms and conditions shall not pass to the Buyer until those goods have been paid for in full.
- (c) Until the goods have been paid for in full:
 - (i) The Buyer shall store the goods in a manner which shows clearly that they are the property of the Seller; and
 - (ii) The Buyer may sell the goods, in the ordinary course of its business, as agent for the Seller and shall account to the Seller for the proceeds of sale (including any proceeds from insurance claims).
- (d) The Buyer irrevocably authorises the Seller at any time, to enter onto any premises upon which:
 - (i) The Seller's goods are stored to enable the Seller to inspect the goods and, if the Buyer has breached these terms and conditions, to reclaim the goods;
 - (ii) The Buyer's records pertaining to the goods are held, to inspect and copy such records.
- (e) The Buyer and the Seller agree that the provisions of this clause apply notwithstanding any arrangement under which the Seller grants credit to the Buyer.

9. SUPPLY

The Seller reserves the right to suspend or discontinue the supply of goods to the Buyer without being obliged to give any reason for its action.

10. PART DELIVERIES

The Seller reserves the right to make part deliveries of any Order; and each part delivery shall constitute a separate sale of goods upon these terms and conditions. A part delivery of an Order shall not invalidate the balance of an Order.

11. SAFETY REQUIREMENTS

The Buyer shall be solely responsible for the proper use of the goods sold to it by the Seller and the training of all users of such goods in strict accordance with product specifications and the principles of good health and safety management.

12. DIMENSIONS, PERFORMANCE DATA AND OTHER DESCRIPTIVE DETAILS

- (a) Photographs, drawings, illustrations, weights, dimensions and any other particulars accompanying, associated with or given in a Quotation, descriptive literature or a catalogue approximate the goods offered by the Seller but may be subject to alteration without notice.
- (b) Any performance data provided by the Seller or a manufacturer is an estimate only and should be construed accordingly.
- (c) Unless agreed to the contrary in writing, the Seller reserves the right to supply an alternative brand or substitute product when necessary.

13. SHIPMENT AND DELIVERY

- (a) Upon acceptance of an Order by the Seller, the Seller will seek confirmation of the period of shipment or delivery. If any variation has occurred in the quoted period, that Seller will notify the Buyer. Unless the Buyer objects in writing within 7 days of that notification to the Buyer, the period of shipment or delivery notified to the Buyer will be the contractual period for shipment or delivery.
- (b) A delivery charge will apply to all deliveries with the exception of back order deliveries which are part of an original order that has been partly fulfilled.

14. CURRENCY

Where goods are imported into Australia, any adverse variation in the price arising from fluctuation in exchange rates between the date of the Buyer's Order and the due date for Payment to the Seller will be to the Buyer's account.

15. CONTINGENCIES

Any charge, duty, impost, sales tax or other expenditure which is not applicable at the date of Quotation or Sales Invoice but which is subsequently levied upon the Seller in relation to a Quotation or Sales Invoice as a result of the introduction of any legislation, regulation or governmental policy, shall be to the Buyer's account.

16. CHARGES BEYOND POINT OF DELIVERY QUOTED

Unless otherwise agreed in writing, if the Seller prepays freight, insurance, custom and import duties (if any), landing and delivery charges and all other charges in connection with shipment and delivery of the goods, then any such charges shall be to the Buyer's account. The Seller reserves the right to nominate the means of delivery.

17. FORCE MAJEURE

If the performance or observance of any obligations of the Seller is prevented, restricted or affected by reason of a force majeure event including strike, lock out, industrial dispute, raw material shortage, breakdown of plant, transport or equipment or any other cause beyond the reasonable control of the Seller, the Seller may, in its absolute discretion give prompt notice of that cause to the Buyer. On delivery of that notice the Seller is excused from such performance or observance to the extent of the relevant prevention, restriction or affectation.

18. DEFAULT OF BUYER

If these terms and conditions are not strictly observed by the Buyer, the Seller may in its absolute discretion, refuse to supply to the Buyer and the Seller shall not be liable to the Buyer for any loss or damage the Buyer may sustain as a result of such refusal. The costs of collection of any moneys due and payable by the Buyer, including the fees of any mercantile agent or lawyer engaged by the Seller, are payable by the Buyer.

19. NO CANCELLATION

The Buyer shall have no right to cancel an Order after it has been communicated to the Seller.

20. WARRANTY AND LIABILITY OF SELLER

- (a) The Seller makes no express warranties under this Agreement except to the extent that the goods supplied are covered by the manufacturer's warranty and the Seller will pass on to the Buyer the benefit of the manufacturer's warranty.
- (b) Upon discovery of any defect in the goods supplied by the Seller, the Buyer shall immediately notify the Seller in writing. The Buyer shall not carry out any remedial work to allegedly defective goods without first obtaining the written consent of the Seller to do so.
- (c) The Seller does not exclude or limit application of any provision of any statute (including the Trade Practices Act 1974 (Cth)) where to do so would contravene that statute or cause any part of this clause to be void.
- (d) The Seller excludes all conditions, warranties and terms, whether expressed or implied by law or otherwise in respect of the goods which may, apart from this clause, be binding upon the Seller, except any implied conditions and warranties the exclusion of which would contravene any statute or cause this clause to be void.
- (e) To the extent permitted by statute, the liability, if any, of the Seller arising from the breach of any implied conditions or warranties in relation to the supply of goods other than goods of a kind ordinarily acquired for personal, domestic or household use or consumption, shall at the Seller's option be limited to:
 - (i) The replacement of the goods or resupply of the goods by the Seller;
 - (ii) The repair of the goods;
 - (iii) The payment of the cost of replacement of the goods; or
 - (iv) The payment of the cost of repair of the goods
- (f) The Seller excludes all liability to the Buyer in negligence for acts or omissions of the Seller, its employees, agents and contractors and all liability to the Buyer in contract for consequential or indirect loss or damages, arising out of or in connection with the sale of goods by the Seller and the purchase of those goods by the Buyer.
- (g) The Buyer expressly acknowledges and agrees that it has not relied upon any advice given by the Seller, its agents or employees in relation to the suitability for any purpose of goods or materials supplied by the Seller.

21. ALTERATION TO CONDITIONS

The Seller may, at any time and from time to time, alter these terms and conditions.

22. GOVERNING LAW

These terms and conditions and, any contract including them, shall be governed by and construed in accordance with the laws of the State of New South Wales and the Seller and the Buyer submit to the non-exclusive jurisdiction of the Courts of New South Wales.