

FASTENING SYSTEMS AUSTRALIA PTY LTD (ACN 088 188 578)
Trading as VIP INDUSTRIAL SUPPLIES (WA)

Trading Terms and Conditions

1. Interpretation

- 1.1. In these terms and conditions ("Terms"):
- (a) "ACL" means the Australian Consumer Law which is contained in Schedule 2 of the *Competition and Consumer Act 2010* (Cth);
 - (b) "Agreement" means the agreement arising between VIP and the Customer upon the Customer's acceptance of these Terms;
 - (c) "Customer" means the person(s) buying the Goods as specified in any invoice, document or order;
 - (d) "delivery" and "delivered" includes supply and supplied;
 - (e) "Goods" means all goods and/or services delivered by VIP to the Customer under these Terms;
 - (f) "Order" means a Customer's purchase order;
 - (g) "PPSA" means the *Personal Property Securities Act 2009* (Cth) and any other legislation and regulations in respect of it and the following words in clause 8 have the respective meanings given to them under or in the context of the PPSA: commercial property, financing change statement financing statement, registration, other goods, proceeds, security agreement, security interest and verification statement;
 - (h) "Schedule of Rates" means the prices in effect at the date of delivery (whether notified to the Customer or not); and
 - (i) "VIP" means Fastening Systems Australia Pty Ltd (ACN 088 188 578) trading as VIP Industrial Supplies (WA).

2. General

- 2.1. The Customer shall be deemed to have accepted these Terms by receiving delivery of the Goods. Any other contractual terms of the Customer (whether upon the Customer's order or elsewhere), which are contrary to or inconsistent with these Terms shall not apply nor shall they constitute a counter-offer.

3. Quotation, pricing and payment

- 3.1. Prices charged for Goods will be according to a current quotation for those Goods. Otherwise, they will be determined by VIP by reference to its Schedule of Rates regardless of any Order.
- 3.2. Any quotation by VIP shall not constitute an offer. Quotations will remain valid for the period stated in the quotation or otherwise for thirty (30) days from the date of the quotation.
- 3.3. Unless otherwise specified by VIP, the prices exclude:
- (a) GST and any GST payable upon the delivery of Goods must be paid by the Customer to VIP in the same manner and at the same time as payment for the Goods; and
 - (b) costs and charges in relation to insurance, packing (other than the standard packing of VIP), crating, delivery (whether by road, rail, ship or air) and export of the Goods.
- 3.4. VIP may refuse to supply any Order in its absolute discretion any may make acceptance of an Order conditional upon it receiving a satisfactory credit assessment of the Customer.
- 3.5. VIP, acting reasonably, has the right to change the price:
- (a) if the Customer requests or directs a variation to the Goods;
 - (b) where the quoted price has been based on information provided by the Customer and that information proves to provide an inaccurate or misleading description or representation of the Goods required; or
 - (c) in the event of increases to VIP's costs to supply the Goods which are beyond VIP's control.
- 3.6. Where VIP supplies Goods on credit, payment for the Goods is due within thirty (30) days from the date of invoice unless otherwise stated in writing by VIP.
- 3.7. Where VIP supplies Goods not on credit, payment for the Goods is strictly cash on delivery unless otherwise stated in writing by VIP.
- 3.8. Payment tendered by the Customer to VIP will be applied as follows:
- (a) firstly, as reimbursement of any amounts payable pursuant to clause 10.1(b);
 - (b) secondly, in payment of any interest payable pursuant to clause 10.1(a); and
 - (c) thirdly, in payment of the longest overdue amount.

4. Delivery

- 4.1. Any times quoted or provided by VIP for delivery of Goods are estimates only and while VIP will endeavour to meet those estimates, VIP shall not be liable for delay in delivery of the Goods. The Customer shall not be relieved of any obligation to pay for Goods by reason of any delay.

5. Property and risk

- 5.1. Until full payment has been made for all Goods, and any other sums in any way outstanding by the Customer to VIP from time to time:
- (a) The property in the Goods shall not pass to the Customer and the Customer shall hold the Goods as bailee for VIP, returning the Goods to VIP on request. The Goods shall nevertheless be at the risk of the Customer from time of delivery.
 - (b) The Customer is only authorised to sell the Goods (or any portion of them) to third parties as the fiduciary agent of VIP provided that there shall be no right to bind VIP to any liability to such third party by contract or otherwise.
 - (c) VIP is irrevocably authorised to enter any premises where the Goods are kept, and to use the name of the Customer to act on its behalf, if necessary, to recover possession of the Goods without liability for trespass or any resulting damage.

6. Defects, warranties and returns

- 6.1. The Customer must inspect the Goods on delivery and must within seven (7) days of delivery notify VIP in writing of any evident defect/damage, shortage in quantity or failure to comply with the description or quote. The Customer must notify VIP of any other alleged defect in the Goods as soon as reasonably possible after that defect becomes evident. Upon such notification, the Customer must allow VIP to inspect the Goods.
- 6.2. Except as expressly set out in these Terms and non-excludable statutory guarantees and warranties implied by the ACL, VIP makes no warranties or other representations in conjunction with the delivery of the Goods. VIP's liability in respect of such warranties is limited to the fullest extent permitted by law.
- 6.3. If the Customer is not a consumer within the meaning of the ACL, VIP's liability for any defect or damage in the Goods is:
- (a) limited to the value of any express warranty or warranty card provided to the Customer by VIP at VIP's sole discretion;
 - (b) limited to any warranty to which VIP is entitled, if VIP did not manufacture the Goods; or
 - (c) otherwise negated absolutely.
- 6.4. Subject to this clause 7 and the ACL, VIP is not obliged to accept a return unless:
- (a) the Customer has complied with clause 7.1;
 - (b) VIP, acting reasonably, agrees that the Goods are defective;
 - (c) the Goods are returned within a reasonable time at the Customer's cost (if that cost is not significant); and
 - (d) the Goods are returned in as close a condition to that in which they were delivered as is possible.
- 6.5. Notwithstanding this clause 7 but subject to the ACL, VIP shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
- (a) the Customer failing to properly maintain or store any Goods;
 - (b) the Customer using the Goods for any purpose other than that which they were designed;
 - (c) the Customer continuing the use of any Goods after any defect became apparent or should have come become apparent to a reasonably prudent operator or user;
 - (d) the Customer failing to follow any instructions or guidelines provided by VIP; or
 - (e) fair wear and tear, any accident or act of God.
- 6.6. Notwithstanding anything contained in this clause 7, if VIP is required by the ACL to accept a return, VIP will only accept the return on the conditions imposed by the ACL.

- 6.7. If VIP is required to replace the Goods under this clause 7 or the ACL, but is unable to do so, VIP may refund any money the Customer has paid for the Goods.
- 6.8. The Customer acknowledges that VIP is not in the business of supplying advisory services and that any advice or other information given by VIP is done so gratuitously.
- 7. Limitation of liability**
- 7.1. Nothing in these Terms shall exclude or limit the liability of VIP for death or personal injury.
- 7.2. VIP shall not be liable for any direct loss or damage suffered by the Customer howsoever caused, as a result of any negligence (but excluding gross negligence) on the part of VIP.
- 7.3. VIP shall not be liable under any circumstances to the Customer for any indirect or consequential loss (including loss of profits) suffered by the Customer or a third party howsoever caused. Alternatively, VIP's liability will be limited to damages that shall not exceed the price of the Goods.
- 8. PPSA**
- 8.1. The Customer grants VIP a security interest in goods, materials and parts delivered by VIP to the Customer as commercial property, more particularly described as other goods and their proceeds to secure the obligation of the Customer to pay the purchase price of the Goods and any other obligations of the Customer to VIP under the Agreement.
- 8.2. As an when required by VIP, the Customer shall, at its own expense, provide all reasonable assistance and relevant information to enable VIP to register a financing statement or a financing change statement and generally to obtain, maintain, register and enforce VIP's security interest in respect of the goods, materials and parts delivered, in accordance with the PPSA.
- 8.3. The Customer waives its right to receive any notice under the PPSA (including a copy of any verification statement) unless the notice is required by the PPSA and that requirement cannot be excluded.
- 8.4. Section 95, 121(4), 125, 130, 132(3)(d), 132(4) and 135 of the PPSA are excluded to the fullest extent permitted by section 115 of the PPSA.
- 9. Default**
- 9.1. If the Customer fails to pay VIP any monies payable by the Customer:
- (a) VIP may in its absolute discretion charge the Customer, and the Customer must pay, interest on the overdue amounts at the rate of 15% per annum calculated from the due date with such interest accruing day to day; and
- (b) the Customer must indemnify VIP against and reimburse VIP for all costs, stamp duty, debt collection agency costs and commissions, legal expenses on a solicitor-client basis and other expenses and costs incurred by VIP in connection with the Customer's default and/or any recovery or attempted recovery process.
- 9.2. If the Customer fails to pay VIP any monies payable by it under the Agreement or becomes bankrupt, compounds with its creditors or, being a company, has a provisional liquidator, liquidator, receiver, receiver manager or administrator appointed, then VIP is irrevocably authorised to enter any premises where unpaid Goods is being kept, and to use the name of the Customer and to act on its behalf, if necessary, to recover possession of those things without liability for trespass or any resulting damage.
- 10. Security**
- 10.1. Subject to clause 10.2, as security for the Customer's due and punctual performance of its obligations under the Agreement, the Customer charges in favour of VIP all of the Customer's legal and equitable interest (both present and future) of whatsoever nature held in any and all real property wheresoever located.
- 10.2. Clause 10.1 shall not apply where the Customer is an individual acquiring goods or services wholly or predominantly for personal, domestic or household use or consumption.
- 11. Intellectual property**
- 11.1. Where VIP has designed, drawn or developed Goods for the Customer, then the copyright in any designs, drawings and documents will remain the property of VIP.
- 11.2. VIP shall not be liable in respect of any claim that may be made against it for infringement of letters patent or registered design or

other intellectual property which may arise as a result of it carrying out instructions given by the Customer and the Customer agrees to indemnify and keep indemnified VIP from and against all or any such claims.

12. Privacy Policy

- 12.1. VIP is committed to the protection of the Customer's privacy and will comply with the Australian Privacy Principles in all dealings with the Customer.
- 12.2. This statement has been prepared in accordance with the National Privacy Principles as outlined in the *Privacy Act 1988* (Cth).
- 12.3. By ordering Goods and/or applying for credit, the Customer is deemed to accept the terms of this Privacy Policy, including consent to the collection and use of personal information about the Customer (and, if applicable, its directors).
- 12.4. In the Customer providing personal information about the Customer (and, if applicable, its directors), the Customer consents to VIP using such personal information ("Personal Information") for purposes:
- (a) concerned with the granting of credit or the continuation of credit facilities (as the case may be);
- (b) concerned with responding to Customer queries;
- (c) of compiling VIP's customer database; and
- (d) concerned with marketing and maintaining a client relationship with the Customer, including the sending of personalised marketing material to the Customer as to VIP's products and/or product lines.
- 12.5. To enable VIP to assess the Customer's application for credit, the Customer authorises VIP:
- (a) to obtain from a credit reporting agency a consumer or commercial credit report containing personal information about the Customer and its guarantors pursuant to Section 18K (1) of the *Privacy Act 1988* (Cth); and
- (b) to obtain a report from a credit reporting agency and other information in relation to the Customer's commercial credit activities, and
- (c) to give to a credit reporting agency information including identity particulars and application details
- 12.6. VIP will not sell, trade or disclose any part of the Personal Information to any third party without first obtaining signed written consent, except where provided by this Privacy Policy or where it is obliged to do so by law.
- 12.7. The Customer (and, if applicable, its directors) will be entitled to access the Personal Information VIP hold's about the Customer (and, if applicable, its directors).

13. General

- 13.1. The Customer warrants that it enters into the Agreement as principal and not as an agent, that it has the power to enter into the Agreement, that it has obtained all necessary authorisations to allow it to do so, it is not insolvent and that the Agreement creates binding and valid legal obligations upon it.
- 13.2. The failure by VIP to enforce any provision of the Agreement will not be treated as a waiver of that provision nor affect VIP's rights to subsequently enforce that provision.
- 13.3. If any provision of the Agreement does not comply with any law, then the provision must be read down so to give it as much effect possible, if it is not possible to give the provision any effect at all, then it must be treated as severable from the rest of the agreement.
- 13.4. The Customer will not be entitled to set off or deduct any money howsoever owed or claimed to be owed to the Customer by VIP, against any money owed to VIP by the Customer under the Agreement, nor is the Customer entitled to withhold payment of any invoice of VIP because the Customer disputes part of that invoice.
- 13.5. VIP may licence or sub-contract all or any part of its rights and obligations under the Agreement without the Customer's consent.
- 13.6. The Agreement shall be governed by the laws of Western Australia and the parties submit to the non-exclusive jurisdiction of the courts of Western Australia and any courts which may hear appeals from those courts in respect of any proceedings in connection with this Agreement.

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