

ISHUTTERS – TERMS AND CONDITIONS OF SALE

This **AGREEMENT** is made between **I Shutters Pty Ltd (ABN 21 110 749 598)**, trading as 'iShutters' of PO Box 456, Winston Hills NSW 2153 (**Seller**) and the person whose details appear in the section designated as 'Customer Information' on, and who has signed, the Order Form (**Purchaser**).

In consideration of the mutual obligations, among other things, referred to in these Terms, Purchaser and Seller agree that:

1. TERM, APPLICABILITY AND VARIATION

- 1.1 This Agreement expressly incorporates the information, terms and conditions on, and must be read in conjunction with, the Order Form.
- 1.2 This Agreement commences on the date it is made and continues in full force and effect until completion of the obligations referred to in this Agreement, unless terminated earlier in accordance with these Terms or extended by written agreement between Seller and Purchaser.
- 1.3 These Terms record the entire agreement between Seller and Purchaser in respect of the sale by Seller and purchase by Purchaser of the Products Ordered and all Products purchased by Purchaser from Seller unless and until replaced or superseded by a written agreement between Purchaser and Seller. These Terms supersede and prevail over any oral representations or other terms or conditions that may be, or have been, communicated between Seller and Purchaser including, without limitation, any terms or conditions notified by Purchaser to Seller.
- 1.4 Variations to these Terms will only have effect if made in writing and signed by a duly authorised officer of both Seller and Purchaser.

2. ORDERS FOR PRODUCTS

- 2.1 Purchaser agrees and acknowledges that every order for Products shall be subject to these Terms without alteration or erasure.
- 2.2 Purchaser warrants that Purchaser has checked the suitability of Products for Purchaser's requirements prior to ordering any Products. The quantities and types of Products ordered by Purchaser (**Products Ordered**) and the delivery location of the Products Ordered are specified on the Order Form. The Products Ordered must not be varied in any manner whatsoever by Purchaser without the written agreement of Seller.
- 2.3 Purchaser acknowledges and agrees that all orders are accepted by Seller subject to:
 - (a) the availability of materials required by Seller to manufacture and supply the Products Ordered; and
 - (b) variations in the colour of the Products Ordered that may be beyond the reasonable control of Seller.
- 2.4 Purchaser agrees that if Purchaser's ability or willingness to pay Seller for Products Ordered is, in Seller's reasonable opinion, in doubt Seller may withhold any Products contracted to be sold to Purchaser, without repudiating this Agreement or incurring any liability whatsoever.

3. CREDIT TERMS AND PERSONAL INFORMATION

- 3.1 Purchaser acknowledges that Seller is not in the business of providing credit to consumers. Seller may, at its sole discretion, accept payment from Purchaser by credit card.
- 3.2 Purchaser irrevocably consents to the collection, use and disclosure by Seller of any personal information relating to Purchaser (including, without limitation, personal information provided by Purchaser on the Order Form and personal financial information relating to the Purchaser) in relation to any order for Products, for the purposes of checking the credit worthiness of Purchaser, to recover any Products or money owing to Seller, to respond to any queries that Purchaser may have or to perform any of Seller's obligations under these Terms.
- 3.3 Purchaser irrevocably authorises those persons nominated by Purchaser as trade referees of, bankers of, or credit providers to, Purchaser to disclose to Seller all information relating to Purchaser requested by Purchaser for the purposes of this Agreement.

4. PAYMENT AND TERMS OF PAYMENT

- 4.1 In consideration of the supply by Seller of the Products Ordered, Purchaser agrees to pay to Seller the Price on and subject to these Terms.
- 4.2 All Prices and quotations are in Australian dollars and are inclusive of GST unless otherwise expressly provided.
- 4.3 Payment by Purchaser for the Products Ordered of the:

- (a) Deposit is due, immediately payable and must be paid by Purchaser to Seller on the date this Agreement is made;
- (b) Progress Payment is due, immediately payable and must be paid by Purchaser to Seller upon agreement between Purchaser and Seller for a date and time for installation of the Products Ordered;
- (c) Final Amount is due, immediately payable and must be made by Purchaser on the date the Products Ordered are installed by Seller; and
- (d) storage or re-delivery costs under clause 5.3 (if any) and cancellation or return costs under clause 7.4 (if any) are due, immediately payable an must be made by Purchaser on the date those costs are incurred.

4.4 Payments by Purchaser under clause 4.3 must be made in full and without offset or withholding and time is of the essence.

4.5 In the event that Purchaser has provided credit card information to Seller on the Order Form, Purchaser irrevocably authorises Seller to arrange the payments referred to in clause 4.3 using that credit card.

5. DELIVERY, INSTALLATION AND SAFE ACCESS

- 5.1 Purchaser agrees that Seller is not, and shall not be, liable for any direct or indirect loss incurred or damage suffered by Purchaser, however it arises, in the event that the Products Ordered are not delivered by any estimated or agreed date.
- 5.2 The Price includes delivery and unloading by Seller of the Products Ordered to a location nominated by Purchaser on the Order Form. Purchaser shall ensure that Seller is provided with unrestricted safe access at the location nominated by Purchaser to enable Seller to deliver and unload the Products Ordered.
- 5.3 Seller will make reasonable efforts to deliver the Products Ordered to the location Purchaser notifies to Seller on the Order Form. In the event that delivery cannot be effected by Seller at that location for any reason Seller may, at Seller's discretion, store the Products Ordered. Purchaser agrees to immediately pay to Seller any costs or expenses reasonably incurred by Seller to store or re-deliver to Purchaser the Products Ordered. Seller may deliver the Products Ordered in one delivery or by instalment.
- 5.4 Purchaser agrees that the Products Ordered shall be deemed to have been delivered to Purchaser when Seller has delivered the Products Ordered, or attempted to delivery of the Products Ordered in accordance with clause 5.3, to Purchaser or Purchaser's nominated agent or representative or to a carrier commissioned by Purchaser as the case may be.
- 5.5 Purchaser acknowledges and agrees that Purchaser must provide Seller and Seller's Personnel with safe and unfettered access to the premises nominated by Purchaser on the Order Form at which the Products Ordered are to be installed for the purpose of installing the Products Ordered. This clause 5.5 is an essential term of this Agreement.

6. RISK

6.1 All risk in the Products Ordered shall, unless otherwise agreed in writing, pass to Purchaser upon delivery or deemed delivery of the Products Ordered in accordance with clause 5.3.

7. EXAMINATION, CANCELLATION AND RETURN

- 7.1 Purchaser must immediately examine the Products Ordered on delivery, and again on installation and Purchaser must notify Seller in writing no later than two (2) days after inspection of any defective delivery or installation of any Products Ordered and, except as may otherwise be provided by applicable laws, Purchaser agrees that Purchaser is deemed to have accepted a delivery of Products Ordered:
 - (a) within two (2) days after delivery unless prior to that time Purchaser has notified Seller in writing of its rejection of that delivery and the reasons for the rejection are reasonable; or
 - (b) immediately upon use or opening of the Products Ordered or the doing of any other act inconsistent with the ownership by Seller of the Products Ordered,whichever is the earlier.

7.2 Purchaser agrees that Seller is not required to accept the return of any Products Ordered for credit unless the conditions in this clause 7 have been fully complied with by Purchaser. Any Products Ordered returned to Seller must be returned in the same condition as received.

7.3 If Products Ordered are opened, used or resold by Purchaser or on Purchaser's behalf, or Seller receives no notification of rejection of the Products from Purchaser within the time referred to in clause 7.1 then Seller shall be immediately entitled to payment in full.

7.4 If Seller agrees, at Seller's sole discretion, to accept a cancellation of any Products Ordered or the return of Products Ordered (other than defective Products Ordered in accordance with clause 7.1) Purchaser must pay to Seller all handling, restocking and other costs (including, without limitation, costs charged to us by our suppliers) reasonably incurred by Seller.

8. OWNERSHIP OF PRODUCTS

8.1 Purchaser acknowledges and agrees that:

- (a) a purchase money security interest, in accordance with the meaning given to that expression in the PPS Act, is granted by Purchaser to Seller in all of the Products Ordered delivered to Purchaser by, or on behalf of Seller, which are personal property under the PPS Act and for which Seller has not received full payment;
- (b) Purchaser adopts or accepts the security agreement set out in these Terms by any or all of the following conduct:
 - (i) by signing the Order Form; or
 - (ii) by accepting delivery of, or taking possession of, any Products Ordered from Seller from time to time;
- (c) Seller may (at Seller's cost), without further notice to Purchaser, apply to register a financing statement, or a financing change statement from time to time, with respect to the security interest referred to in these Terms; and
- (d) the following provisions of the PPS Act, to the extent referred to below, shall not apply and shall not place any obligations on Seller in Purchaser's favour:
 - (i) sections 95 and 130 of the PPS Act, to the extent that Seller is required to give a notice to Purchaser; and
 - (ii) sections 96, 125, 132(4) and 135 of the PPS Act.

8.2 To the fullest extent permitted by law, and without prejudice to any other rights that Seller may have under the PPS Act or otherwise, until Payment in full has been received by Seller from Purchaser in accordance with these Terms:

- (a) full and absolute ownership of, and title in, all Products Ordered delivered to Purchaser remains with Seller;
- (b) Purchaser holds any and all Products Ordered as bailee and fiduciary for Seller and will immediately return the Products Ordered to Seller when required by Seller at Purchaser's cost;
- (c) Purchaser authorises and grants an irrevocable licence to Seller and its authorised representatives to enter any premises where any Products Ordered are kept to repossess the Products Ordered that are not fixtures and to use all reasonable force in doing so without any liability for any resulting damage;
- (d) Purchaser must not allow any person to have or acquire any interest or security interest in the Products Ordered;
- (e) Purchaser may only sell any and all Products Ordered in the ordinary or usual course of business and as Seller's fiduciary and agent and provided that:
 - (i) Seller has a security interest in the entire proceeds of the sale of those Products Ordered;
 - (ii) the entire proceeds of the sale of those Products Ordered are immediately paid to Seller or held by Purchaser on trust for Seller separately for its account, not mixed with the purchaser's other money, debts or property and payable immediately without demand;
 - (iii) Seller has the right to trace the proceeds of any such sales in accordance with equitable principles; and
 - (iv) Purchaser assigns the benefit of any claim against Purchaser and accounts fully to Seller for the proceeds of the sale unless and until all monies owing by Purchaser to Seller under this agreement are paid and received by Seller in full; and
- (f) Purchaser shall store and label all Products Ordered in a way that clearly manifests Seller's title to such goods.

8.3 In the event that there is any inconsistency between the operation of clause 8.1 and clause 8.2, the terms and conditions of clause 8.1 shall prevail to the extent of that inconsistency.

8.4 If these Terms are terminated, the provisions of this clause 8 will survive that termination and continue to the extent that Seller may

exercise the rights under these Terms to recover its property and any money due to it.

9. DEFAULT

9.1 Purchaser acknowledges and agrees that if:

- (a) Purchaser fails to pay when due any amount owing to Seller; or
- (b) Purchaser fails to comply fully with these Terms, then Seller may do any or all of the following (in addition to any other rights Seller may have, including termination of these Terms):
 - (c) require Purchaser to immediately pay all amounts that are invoiced but unpaid and to pay in advance for any further supply or delivery of Products Ordered (even if specified otherwise in any invoice or confirmation given to Purchaser by Seller);
 - (d) suspend or cease supplying Products to Purchaser (whether or not Purchaser has ordered Products that have not yet been supplied);
 - (e) require that any Products Ordered that have not been paid for be immediately returned to Seller at Purchaser's expense;
 - (f) enter Purchaser's premises and seize or repossess Products Ordered that are not fixtures for which payment is overdue; or
 - (g) cancel any other contract(s) with Purchaser or such parts as Seller sees fit.

9.2 The rights referred to in clause 9.1 are without prejudice to any other right or demand available to Seller.

9.3 Purchaser is liable for, and must pay to, Seller all costs, expenses or fees (including costs on a full indemnity basis) incurred by Seller in securing Payment or recovering the unpaid Products Ordered and will be liable to Seller for all costs incurred by Seller arising, directly or indirectly, as a result of non payment for Products Ordered, including legal costs.

10. TERMINATION OF THIS AGREEMENT

10.1 In the event that Seller breaches a condition of this Agreement and that breach is not remedied within ten (10) Business Days after Seller receives written notice from Purchaser of that breach, Purchaser may terminate this Agreement after ten (10) days' written notice to Seller.

10.2 In addition to the rights referred to in clause 9.1, Seller may terminate these Terms without cause after ten (10) days' written notice to Purchaser.

10.3 Upon the occurrence of any of the events referred to in clauses 9.1(a) or 9.1(b) Seller may immediately terminate these Terms by written notice to Purchaser.

10.4 In the event that Seller terminates these Terms under clause 10.1 or 10.3, all money owing to Seller by Purchaser is immediately due and payable. In the event of termination of these Terms for any reason, Seller has no obligation whatsoever to refund any amounts paid by Purchaser to Seller under this Agreement for work done by Seller. Clauses 4, 8, 10.4, 11, 12, 13, 17 and 18 survive termination of these Terms.

11. GUARANTEE AND LIMITATION OF LIABILITY

11.1 Seller guarantees that the Products Ordered that are delivered by Seller under this Agreement are of acceptable quality (as that expression is defined in the ACL) on delivery. Seller may, at Seller's expense, repair any defects in Products Ordered that are notified to Seller in writing by Purchaser in accordance with clause 7.1.

11.2 Certain provisions of the Competition and Consumer Act (including, without limitation, the Australian Consumer Law) and other State, Territory or Commonwealth laws in Australia, as amended or replaced from time to time, (collectively **ACL**) apply to the operation of these terms and conditions and provide consumers (as that expression is used in the ACL) and others with certain rights (referred to collectively as the **consumer guarantees**) in relation to goods or services purchased by those persons. Other than consumer guarantees, which are not excluded, modified or restricted by this provision, Seller does not give any guarantee or warranty or make any representation of any kind, express or implied, with respect to the supply by Seller of any goods or services.

11.3 Other than in respect of goods or services supplied to consumers or goods or services that are of a kind ordinarily acquired for personal, domestic or household use or consumption, Seller's liability for the breach of any condition or warranty, whether express or implied

(other than warranties or conditions in relation to title, encumbrances and quiet possession) is limited, at Seller's option, to:

- (a) in the case of goods; the replacement of the goods, the supply of equivalent goods, the repair of the goods, the payment of the cost of replacing the goods or of acquiring equivalent goods; or
 - (b) in the case of services; the supplying of the services again or the payment of the cost of having the services supplied again.
- 11.4 Subject to rights that Purchaser may have under the ACL, which are not excluded, modified or restricted by this provision, Seller is not liable to Purchaser or any other person, whether in contract, tort or otherwise, for any loss or damages (including without limitation specific, indirect, consequential or economic loss) howsoever caused arising from any event.
- 11.5 Notwithstanding anything contained in this Agreement, nothing in these Terms:
- (a) excludes, restricts or modifies or purports to have the effect of excluding, restricting or modifying any condition or warranty that is implied by, or consumer guarantee specified by, the ACL or Seller's liability under any such condition, warranty or guarantee; or
 - (b) gives rise to any liability on Purchaser's part or qualifies Seller's liability in circumstances where Seller is in breach of these terms and conditions, including any conditions or warranties implied, or consumer guarantees specified, by the ACL.

12. INDEMNITY

- 12.1 Purchaser agrees to immediately indemnify and keep indemnified Seller and Seller's Personnel, from and against any and all claims, losses, damages, costs, judgments, expenses and liabilities of any kind (including, without limitation, reasonable legal costs) whether for personal injury or property damage, arising out of or in connection with:
- (a) any breach by Purchaser of any term, condition or warranty referred to in these Terms; or
 - (b) any negligent act or omission of Purchaser.

13. MATERIALS AND INTELLECTUAL PROPERTY

- 13.1 Seller may supply Purchaser with Materials. Seller may direct Purchaser to discontinue use of, or return, any Materials at any time.
- 13.2 Seller and others own or licence and reserve all Intellectual Property rights in the Materials, Products and any other materials notified or provided to Purchaser. Purchaser acknowledges and agrees that Purchaser has no proprietary right or interest in any Intellectual Property rights relating to the Materials or Products. If Seller makes available or introduces any of its Intellectual Property to Purchaser in providing Products to Purchaser then all proprietary rights to that Intellectual Property shall remain the sole property of Seller.

14. NOTICE

- 14.1 Any notice to Seller that needs to be given in writing should be sent by Purchaser as follows:

Send to: ISHUTTERS
By Post: PO Box 456, WINSTON HILLS NSW 2153
By Facsimile: 1300 551 020
By Email: info@ishutters.com.au

- 14.2 Any notice to the Purchaser that needs to be given in writing should be sent by Seller to the Purchaser's address on the Order Form.

15. SEVERANCE

- 15.1 If any provision of these Terms is or becomes wholly or partly illegal, invalid or unenforceable then that provision severed from these Terms to the extent of the illegality, invalidity or unenforceability and the remaining provisions shall remain in full force and effect and not be affected and operate as if the severed provision had not been included.

16. WAIVER AND ASSIGNMENT

- 16.1 Purchaser must not assign or transfer the benefit of these Terms without the express written consent of Seller. Seller may, on reasonable notice to Purchaser, assign or transfer the benefit of these Terms to any third party. Waivers will only have effect if made in writing and signed by the relevant party. No waiver by Seller of any

default or breach shall be deemed a waiver of any prior or subsequent default or breach.

17. GOVERNING LAW

- 17.1 These Terms will be governed by and construed in accordance with the laws of the State of New South Wales, in Australia. The parties agree to submit to the non-exclusive jurisdiction of the Courts of New South Wales and the Federal Court of Australia.

18. DICTIONARY AND INTERPRETATIONS

18.1 Dictionary

In these terms and conditions:

- (a) **ACL** has the meaning given to that expression in clause 11.2;
- (b) **Agreement** means this instrument;
- (c) **Business Day** means a day which is not a Saturday, Sunday or public holiday in NSW;
- (d) **consumer guarantees** has the meaning given to that expression in clause 11.2;
- (e) **Deposit** means the amount so described on the Order Form;
- (f) **Final Amount** means the amount so described on the Order Form;
- (g) **GST** means any tax on supply (without regard to any input tax credit) imposed by or through the *A New Tax System (Products and Services Tax) Act 1999* as amended or replaced from time to time, and any related tax legislation;
- (h) **Intellectual Property** means all forms of intellectual property throughout the world including copyright, registered patent, design, trade mark and confidential information including know-how and trade secrets;
- (i) **Materials** means any and all technical, marketing and promotional materials relating to the Products;
- (j) **Order Form** means the document so described, linked to the "measure email", and forms part of, this Agreement;
- (k) **Payment** means receipt by Seller of cash or cleared funds;
- (l) **Personnel** means, in relation to a person, that person's directors, employees, officers, members and agents (if any);
- (m) **PPS Act** means the *Personal Properties Securities Act 2009* (Cth) as amended or replaced from time to time;
- (n) **Price** means the amounts so described in the Order Form equal to the aggregate of the Deposit, Progress Payment and the Final Amount;
- (o) **Products** means the products and services sold or offered for sale by the Seller from time to time;
- (p) **Products Ordered** means those Products that are specified on the Order Form;
- (q) **Progress Payment** means the amount so described on the Order Form (if any); and
- (r) **Terms** means the terms and conditions referred to in this Agreement.

18.2 Interpretation

In these Terms unless the context otherwise requires:

- (a) words importing the singular include the plural and vice versa;
- (b) other parts of speech and grammatical forms of a word or phrase defined in these Terms have a corresponding meaning;
- (c) an expression importing a natural person includes a company, partnership, joint venture, association, corporation or other body corporate and a Government Agency;
- (d) a reference to a thing includes a part of that thing;
- (e) a reference to a law includes a statute, regulation, ordinance, by-law judgment, rule of common law or equity and is a reference to that law as amended, consolidated or replaced;
- (f) a reference to a party to a document includes that party's successors and permitted assigns;
- (g) an agreement on the part of two or more persons binds them severally;
- (h) where the day on or by which something must be done is not a business day, that thing must be done on or by the following business day; and
- (i) headings and titles are for convenience only and do not affect the interpretation of these Terms.