

## Conditions of Sale

### 1. DEFINITIONS

- “**SELLER**” means Vanguard Blinds Pty Ltd
- “**BUYER**” means the purchase of Goods hereunder
- “**PRICE**” and “**GOODS**” are those stated in Seller’s Quotation.

### 2. CONTRACT

Any contract for the sale of Goods by Seller to Buyer (“Contract”) is upon and subject to these Conditions and the terms on the reverse hereof and no others, unless other written terms are signed by a **duly authorised representative** of the Seller. If no quotation or written acceptance is given by Seller all deliveries are made subject to these conditions.

### 3. QUOTATIONS

#### Any Quotation –

- (a) is an offer on these Conditions only and if accepted is accepted without qualification.
- (b) will lapse without notice after one (30) days from the date it is made
- (c) is subject to availability of Goods in stock.

### 4. PRICE

All Goods are sold at the price quoted PROVIDED that not more than thirty (30) days shall have elapsed since the date of the Quotation. **Special delivery charges incurred in complying with Buyer’s instructions will be charged as an extra to the Buyer.**

### 5. PAYMENT

- (a) **Final Instalment** - The final instalment is due on the day of installation.
- (b) **Interest** - The price is payable in full no later than the date shown on the invoice. Thereafter any part of the Price unpaid shall bear interest from such date until payment at a rate equal to 1.25% per month.
- (c) **Late Payment** - Payments not received within 14 days from the installation date will incur a late payment fee equivalent to 5% and be referred to a collection agent for recovery.
- (d) **Delivery by Instalments** - If Goods are delivered by instalments the sale of each instalment comprises a separate Contract. Payment for any such instalment shall be in accordance with sub-clause (a) and failure to pay on the due date shall entitle Seller to suspend deliveries of other instalments without prejudice to any other remedy available to Seller.
- (e) **Credit Standing** - If Seller becomes dissatisfied with Buyer’s credit standing; the seller may suspend further deliveries until Buyer’s credit standing has been established to Seller’s satisfaction.
- (f) **Cost Recovery** - In the event your bill remains unpaid and requires the use of debt collection or a mercantile agency, you agree to indemnify Vanguard of all costs associated with this collection.

### 6. RISK AND TITLE

- (a) The Risk in respect of all Goods shall pass to Buyer upon actual or constructive delivery, notwithstanding that the Seller may arrange and charge for the costs of carriage. Delivery of the Goods to a carrier constitutes delivery to Buyer. Seller will not in any circumstances be liable for damage, breakage or loss occurring after the Goods have been so delivered.
- (b) Seller shall retain title to the Goods until payment in accordance with Clause 5 has been made. If payment in full is not made on the agreed date, the seller shall have the right, with or without prior notice, to recover possession of the whole or any part of the goods (and the buyer agrees that the seller may enter any premises occupied by the buyer to satisfy that purpose) without prejudice to other rights and remedies.
- (c) The Buyer will keep separate records in relation to the proceeds of the sale of any goods which have not been paid for, bank the proceeds of any such sale into a separate account and immediately remit such funds to the credit of the seller.
- (d) If any goods are used in a manufacturing process or mixed with other materials, the Buyer must record the value of goods so consumed in relation to each unit of finished product and upon sale of any unit of finished product immediately remit that amount from the proceeds of sale to the Seller.

### 7. DELIVERIES

- (a) **Transport** - Seller may select the route, method and agency of transportation and has the Right of stopping the Goods in transit.
- (b) **Delivery** - Seller shall endeavour to comply with any date for delivery of the Goods but unless the Contract expressly otherwise provides, such date shall not be binding. If Seller fails to deliver the Goods by such date such failure shall not constitute a breach of the Contract and Buyer shall not be entitled to any remedy in respect of it.
- (c) **Suspension** - If Seller is unable to supply goods or any part thereof due to circumstances beyond its control, Seller may suspend performance of the Contract or make partial deliveries for so long as such circumstances exist, provided that if performance is suspended for more than three consecutive calendar months, Buyer or Seller may by written notice terminate the Contract or cancel any outstanding parts thereof. In such circumstances Buyer shall pay for all work done and materials used by Seller to the date of termination. Seller shall not be liable for any direct or consequential loss or damage suffered by Buyer as a result of Seller’s inability to perform its obligations in such circumstances. In the event of any failure by Buyer to perform its obligations under the Contract, Seller shall be entitled without prejudice to any other remedy of Seller or to the Obligation of Buyer to pay for goods already delivered or manufactured
  - (i) to suspend to Buyer so long as such failure shall continue and/or
  - (ii) by notice to Buyer to cancel any further obligations of Seller under the Contract
- (d) **Liability Limitation** - Seller shall not be liable in contract or in tort or otherwise howsoever for any loss or Damage including consequential loss or damage arising from delay in manufacture or Deliver howsoever caused for any delay in failure of delivery after goods have been Dispatched from Seller’s work (unless otherwise agreed by Seller in writing)

### 8. DEFECTIVE GOODS

- (a) **Refund, Repair or Replace** - Seller undertakes at its option to refund the price of or to repair or replace, free of charge, any Goods manufactured and supplied by which are returned carriage paid to Seller and which are shown to Seller’s satisfaction to be defective (provided that they have been properly stored, assembled, maintained, combined with other goods, and used in accordance with Seller’s directions and fair wear and tear excepted) by reason of faulty material or workmanship within six (6) months from the date of their original dispatch. If the Goods are shown to be so defective, Seller will refund the carriage costs. Subject to Clause 15,

Seller shall not be liable for any loss or damage caused by arising out of any alteration or modification or any change whatsoever to the Goods or any part thereof by Buyer or any third party.

**(b) Liability Limitation** - Subject to Clause 15, Seller shall not otherwise be liable for any loss or damage whether direct, indirect or consequential incurred by Buyer resulting indirectly from a defect in the Goods, or loss resulting there from including loss of profits, loss of production, or any other consequential loss or damage or incurred in consequence of any negligence or default on part of Seller its servants or agents in the manufacture or supply of the Goods.

## **9. CONFIDENTIAL INFORMATION AND INTELLECTUAL PROPERTY**

**(a) Seller's Property** - Unless otherwise agreed in writing, patterns, jigs, tools, fixtures and any other plans, designs drawings and specifications ("Information") manufactured or prepared by Seller in relation to any Contract shall remain Seller's property notwithstanding any charge therefore Seller may, in its discretion, make to Buyer and Seller reserves all proprietary and industrial property rights vested in it in relation to such Information. Buyer shall not without Seller's written prior consent deal in any way with the Information and when in possession of any Information shall as promptly as possible and in any case immediately upon demand return it to the Seller. Buyer's Tools Where the Seller at Buyer's request uses Buyer's patterns, jigs, tools or fixtures Buyer shall be liable for any repairs, alterations or replacement necessary thereto or for any damage or loss (unless occurring exclusively due to the negligence of Seller, its servants or agents) whether due to fair wear and tear, inherent unsuitability for the production of satisfactorily Goods otherwise.

**(b) Seller's Specifications** - Unless Seller agrees in writing to work to Buyer's drawings or specifications Seller's normal tolerances and material specifications shall apply.

**(c) Proprietary Rights** - Seller and its suppliers have no liability to Buyer in connection with any claim that buyer's intended or actual use of resale of any of the goods either as sold or in conjunction with other materials constitutes an infringement of any proprietary or industrial property rights of third parties and buyer agrees to indemnify Seller against all such claims in relation to the production or sale of any goods in conformity with Buyer's specifications or instructions.

## **10. REPRESENTATIONS**

**(a)** Subject to Clause 15 Buyer assumes responsibility for the suitability or fitness for any particular purpose of the Goods, and acknowledges that any statement or representation as to the suitability or fitness of Goods is a statement of opinion only and that no reliance is placed on it.

**(b)** It is expressly agreed that any technical advice furnished by Seller is, unless furnished pursuant to an express agreement supported by valuable consideration, given gratis and accepted at Buyer's risk and Seller assumes no obligation or liability for any advice given or results obtained by Buyer.

## **11. BUYER'S PREMISES**

If Seller's employees or agents work on Buyer's premises or elsewhere at Buyer's request to the manufacture, supply, installation or use by Buyer of the Goods, Seller shall not be liable to Buyer in respect of any claims for damage to Buyer's property;

**(a)** except where the liability incurred is wholly and exclusively due to the negligence of Seller's employee or agents;

**(b)** Seller shall not be liable for any indirect or consequential loss or damage whatsoever or howsoever arising and whether suffered by Buyer or any third party; and

**(c)** Seller shall in no event be liable for any amount in excess of the price of the Goods.

## **12. BUYER'S DEFAULT**

If the Buyer:

**(a)** commits a breach of the Contract or any of its obligations, or

**(b)** the buyer threatens to cease to carry on its business or is unable to pay its debts within the meaning of Section 459C of the *Corporations Act 2001* (Cth) and any amending legislation; or

**(c)** a receiver, liquidator, trustee in bankruptcy or official manager or administrator of the Buyer or any of its business or property is appointed the Seller may terminate the Contract forthwith and upon written notice of such termination posted to Buyer's last known address any Contract shall be deemed to have been terminated without prejudice to any claim or right the Seller might otherwise make or have against Buyer but it is nevertheless agreed that Buyer shall pay Seller at the Contract rate for all the work done, materials used and Goods supplied up to and including the date of termination. Waiver by the Seller of any specific default by the Buyer under these Conditions of Sale or a failure of the Seller to cancel the sale of any part thereof when such right arises shall not constitute a waiver by the Seller of any Conditions of Sale except such defaults as are specifically waived, and then only in respect of the actual defaults.

## **13. PPSA**

**(a)** The Buyer acknowledges and confirms that the Seller has given value for the Seller's Security Interest in the Collateral, including by its promises under this Agreement and nothing in this Agreement is intended to indicate that a Security Interest under this document attaches at a later time than the time specified in section 19(2) of the *Personal Property Securities Act 2009* (Cth) or as it may later be amended (PPSA).

**(b)** The Buyer acknowledges that, for the purposes of the PPSA, the PPSA Security Interest over the Seller's Property is a Purchase Money Security Interest ("PMSI").

**(c)** The Buyer consents to the Seller effecting a registration on the PPSR (in any manner the Seller considers appropriate) in relation to any Security Interest arising under or in connection with any Contract between the Seller and Buyer. The Buyer agrees to provide all assistance reasonably required by the Seller to facilitate this.

**(d)** The Buyer waives its right to receive any notice under the PPSA (including notice of a verification statement) unless the notice is required by the PPSA and cannot be excluded.

**(e)** The Buyer acknowledges that if the Seller's interest under any Contract between the Seller and Buyer is a Security Interest for the purposes of the PPSA:

**(i)** that Security Interest relates to the Plant and all Proceeds of any kind; and

**(ii)** any Contract is a security agreement for the purposes of the PPSA.

## **14. LIEN**

Seller shall in respect of all unpaid debts or moneys due from Buyer have a general lien on all Goods and property of Buyer in its possession and may on the expiration of fourteen (14) days notice to Buyer dispose of such goods or property as it thinks fit and apply and proceed towards reduction of such debts.

## **15. STATUTORY LIABILITY**

Nothing in this Contract shall exclude, restrict or modify any term, condition, warranty or liability implied into this Contract by statute, where to do so would render and provision of this Contract void or Seller subject to penalties. Subject to that, any implied conditions warranties and liabilities, including liability for consequential loss for loss arising from negligence, are hereby excluded. Where it is legally permitted, any remaining liability implied by statute or resulting from breach of any condition or warranty implied by statute is limited to repair or replacement of the Goods at Seller's option.

## **16. GOVERNING LAW**

These conditions and any Contract made between Seller and Buyers shall be governed by and construed in all respects in accordance with the laws of the State of Queensland and any disputes arising there under shall be submitted to the jurisdiction of the Courts of that State and for such purpose the parties hereby irrevocably submit to the non-exclusive jurisdiction of those Courts.