

# Standard Terms & Conditions



Australia's Window & Door Hardware Store

## Warranty

Total Hardware Pty Ltd warrants its products to be free of defects in material and workmanship for a period of at least 12 months from the date of purchase as indicated by its suppliers and/or manufacturers.

This warranty is limited to Total Hardware Pty Ltd option to repair, replace or refund. Replacement of any products proven to be faulty in manufacture or materials will be done so with the same or equivalent product free of charge.

Labour charges, transportation costs and other charges associated with the replacement or re-installation of the parts or product are excluded from this warranty and will not be incurred by Total Hardware Pty Ltd.

Total Hardware Pty Ltd assumes no liability under the warranty for the following:

- \* Misuse, abuse, accidental or intentional damage.
- \* Improper adjustment or operation by the end user.
- \* Improper selection, installation or maintenance.
- \* Unauthorised repair or modifications.
- \* Corrosion, environmental or situational related damage.

Tarnish or excessive wear on soft finishes such as brass is not covered by this warranty as deterioration is possible under some environmental and situational conditions, frequency of use, and/or other factors.

## Terms

### Up-Front Customers

To operate on an 'Up-front/Cash Sale' basis, goods must be paid for in full, prior to pick up or dispatch from our warehouse.

### Account Customers

Strictly net 30 days from end-of-month (EOM).

Total Hardware Pty Ltd reserves the right to require payment in advance or cash on delivery from any customer.

## Application for 30 Day Credit Account

A) The applicant hereby applies to have a 30 day credit account opened in the applicant's name with Total Hardware Pty Ltd (ACN 139 920 424) on full completion of this application and acceptance of the Terms & Conditions (T&Cs) contained within this application.

B) The applicant declares that all the information supplied by them is true and correct in every respect.

C) This application is signed as a deed and read in accordance with the Terms & Conditions (T&Cs) as attached.

D) No variations or modifications to the attached Terms & Conditions (T&Cs) are permitted.

E) By signing this document, the applicant provides Total Hardware with permission to perform necessary credit checks on the applicant in accordance with the privacy statement, clause 29, outlined in the Terms & Conditions (T&Cs).

The following criteria are required for processing of 30 day credit account applications:

- \* Applicants must have a registered ABN.
- \* Applicants must be industry related in the fields covered by Total Hardware.
- \* Acceptance or otherwise of the applicant will be notified together with any additional requirements.
- \* Applicants must have an approved trading account with Total Hardware before any transactions can be completed.

## Invoicing

- \* Customers should provide order numbers when ordering and should clearly indicate their preferred freight carrier (if applicable). A copy of the invoice will accompany each purchase order. Total Hardware provides freight services to most locations in Australia. Delivery times are subject to the contracted courier service provider's terms and conditions. Delivery times are subject to variation and cannot be guaranteed. Freight charges apply.
- \* Monthly statements of account are emailed and payment should be received within the prescribed time as set out in the attached Terms & Conditions (T&Cs).

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## Credit Claims (e.g. goods being returned/offered for credit)

- \* Any goods returned for credit outside the period specified in clause 9 of the attached Terms & Conditions (T&Cs) will be charged a restocking fee of 25% of the purchase price for the goods on returning any non-defective goods.
- \* All products returned for credit must be in original Total Hardware packaging and be of merchantable quality. These goods must be returned with the original purchase invoice no. (e.g. copy of invoice).
- \* Accepted goods returned will only be credited against the original purchase invoice number. Transport and/or freight charges will not be credited. Credit notes when issued will appear on monthly account statements.
- \* Goods returned for claim, damaged due to inadequate packing, freight damage or with parts missing, damaged or replaced, other than the original products supplied by Total Hardware, will not be processed for credit. Return of all products is at the applicant's risk and expense. We suggest that before returning any goods, you should first contact Total Hardware.
- \* All applicants should adequately check and investigate all goods returned by their customers/consumers before offering or transacting a credit. They should ensure that the products are the original equipment as supplied, are in unused condition and are packaged in original Total Hardware packaging.
- \* Total Hardware reserves the right to accept or reject any return or offers for credit claims. Goods will not be credited until they have been received back to a Total Hardware branch and reviewed and assessed for claim.

## Terms & Conditions (T&Cs)

This section applies to every applicant/customer.

1. You will purchase and we will supply goods to you only on these terms and conditions. However, we are not obliged to supply goods to you when requested to do so.
2. Without limiting the circumstances in which a binding contract may form between you and us, the delivery of goods to you and your acceptance of their delivery constitutes a binding contract for the sale of those goods on these terms and conditions.
3. No course of prior dealings between you and us and no usage of trade are relevant to supplement or explain any term or condition of this schedule.
4. These terms and conditions;
  - A) constitute a complete and exclusive statement of the agreements, understandings, terms and conditions between you and us with respect to the supply of goods by us to you, notwithstanding any conditions to the contrary expressed in any of your order forms or other documents, and
  - B) supersede all prior arrangements, written or oral, and
  - C) bind you jointly and severally if there are more than one of you.
5. All additions and modifications to the agreement, or these terms and conditions, must be in writing signed by us or on our behalf.
6. Except where payment for goods supplied to you is made immediately, payment is due within 30 days from the end of the month in which our invoices are dated.
7. When processing your payment, we may apply the payment to the earliest outstanding invoice or other amounts owing at our discretion.
8. After the due date for payment, we may, at our discretion, charge interest on outstanding amounts payable, calculated on a daily balance. The rate to be applied to each daily balance is the reference rate for the time being of NAB (National Australia Bank) plus 4% per annum.
9. If you do not say otherwise within 7 days of delivery of goods, you must accept that those goods delivered are in accordance with your order. We will treat all claims for credit for returned goods on an individual transaction basis.
10. Notwithstanding clauses 11 and 15, you bear all risk in respect of the goods from the time of delivery to you or your carrier at our premises or warehouse, or delivery by us to you (as the case may be), unless otherwise agreed in writing between you and us.
11. You must, at your own expense, insure all goods we supply to you against loss or damage however caused, for their full replacement value and for our benefit. You must take out this insurance from the time risk passes to you as referred to in clause 10, and must keep this insurance on foot until property in the goods passes to you as set out in clause 15.1.
12. Repossession of goods
  - 12.1 If you;
    - A) fail to pay for any goods on the due date, or
    - B) commit an act of bankruptcy, or
    - C) allow a trustee in bankruptcy or receiver or receiver manager to be appointed to you or any of your property, or
    - D) allow distress to be levied or a judgment, order or security to be enforced, or to become enforceable against your property, or
    - E) are a company and;
      - i) proceedings are commenced to wind up you or any of your subsidiaries, or for the appointment of a provisional liquidator, or placing you or any of your subsidiaries under official management, or

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ii) a directors meeting is called for the purposes of considering the appointment of a voluntary administrator, or enabling you or any of your subsidiaries to avail itself of any other avenue of protection from creditors, then unless all goods supplied by us to you have been paid for in full, we and our agents may enter upon your premises (doing all that is necessary to gain access) where goods supplied under the agreement are situated, at any time, and retake possession of any or all of the goods we have supplied to you. You indemnify us for any loss or liability whatsoever incurred by us in the reasonable exercise of our rights under this clause 12. This indemnity covers (without limitation) any liability to any third party for trespass or damage to property occasioned by us in the reasonable exercise of these rights.

- 12.2 If we repossess goods under these terms and conditions then, to the extent permitted by law, we may retain those goods or dispose of them without notice to you or any other person and, after deducting reasonable costs of sale, we will credit any surplus by way of set-off against any sums owing to us. We are not obliged to provide you with a statement of account, or to pay any person (other than you, your receiver or your liquidator) any sum in excess of the total amount you owe us at the time we credit your account. We are not obliged to re-instate this agreement or re-supply any re-possessed goods to you.
13. If;
- A) you fail to make a payment on the due date, or
  - B) you cancel delivery of the goods, or
  - C) we withhold delivery for any other reason, or
  - D) we retake possession of any or all the goods we have supplied to you, then we reserve the right to resell the goods concerned.
14. If we conduct a resale pursuant to clause 13;
- A) we may do so at our premises or elsewhere, and
  - B) the resale may, at our discretion, be by public or private sale or in fulfilment of one of our existing supply contracts, and
  - C) we may recover from you as liquidated damages for our loss of bargain, the difference between the resale price and the unpaid contract price (together with interest and any incidental damages, such as holding expenses and charges but less expenses saved as a result of your breach of contract). If applicable goods cannot be sold within 3 months of the first attempted sale, those goods will be deemed to have a resale price of nil.
15. Personal Properties Security Act 2009 (Cth) ("PPSA")
- 15.1 In relation to all goods that we supply to you:
- A) Title to and property in those goods will remain with us until the latter of;
    - i) payment in full for the goods (without any deduction or set-off whatsoever), and
    - ii) payment in full of all other monies owing or unpaid by you to us, including monies in respect of goods previously or subsequently supplied to you by us.
  - B) Until property passes to you, you must hold all goods owned by us on trust in a fiduciary capacity for us as bailee, and store them in a manner to enable them to be identified and cross-referenced to particular invoices (including by storing the goods separately from your own goods and from goods supplied by others).
  - C) You have no power to commit us to any contract or liability.
  - D) You acknowledge that we will be given ownership in any new goods or objects formed if you transform our goods into other products, or affix those goods to other objects as provided for in section 99 of the PPSA.
  - E) You hold separately on trust for us all proceeds resulting from the disposal (tangible or intangible), including insurance proceeds, unless and until all monies owing by you to us are paid in full (without any deduction or set-off whatsoever).
  - F) For the purposes of section 14(6)(a) of the PPSA (but subject to clause 7 above), if you pay us money, we may apply that money to satisfy any obligation to us: First, with respect to where we do not have security interest in goods; second, with respect to monies owed for goods where we do not have a Purchase Money Security Interest (under the PPSA); and, lastly, with respect to monies owed for goods where we do have a Purchase Money Security Interest.
- 15.2 For the purposes of section 115 of the PPSA, goods are supplied to you on the understanding that they are not to be used predominantly for personal, domestic or household purposes. If this is not the case, you must inform us immediately. You agree that the following provisions of the PPSA are contracted out of and will not apply as between you and us, or will apply as modified as follows:
- A) Sections 95, 121(4), 125, 130, 132(3)(d), 132(4) and 135 will not apply and are contracted out of in full.
  - B) The other sections referred to in section 115 will apply to the supply of goods by us to you in addition to all other rights we have under these terms and conditions, or at general law in respect of goods.
- 15.3 You agree that we may register a financing statement on the register maintained for the purposes of the PPSA. For the purposes of section 157 (3) of that Act, you waive all rights to receive from us notice of any verification statement respecting commercial property.
- 15.4 You must immediately do all things (including providing all details and data) that we, at any time, require, or consider necessary or desirable to do any one or more of the following with respect to any security interest granted by you to us:
- A) Ensure that the security interest is enforceable and perfected with the highest priority, as is reasonably and commercially possible.
  - B) Enable or facilitate the registration of a "financing statement" or a "financing change statement".
  - C) Enable or facilitate the enforcement of the security interest by us.
- 15.5 Notwithstanding any other provision of these terms and conditions, you are not entitled to possession of any goods to be supplied by us until any or every security interest respecting the goods is (to our satisfaction) perfected by registration on the Personal Property Securities Register. Until such time, we may (in our absolute discretion) retain possession of the goods.

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16. To identify our goods, we may mark or label them in any manner. You must not remove or alter our mark or label from our goods whilst we retain ownership of the goods.
17. You have the benefit of conditions and warranties implied by the Australian Consumer Law set out in Schedule 2 to the Competition and Consumer Act 2010 ("ACL"), and nothing in these terms and conditions is intended to exclude, restrict or modify any statutory obligation we have if that cannot lawfully be effected. References to specific provisions of and circumstances arising under the ACL are intended to include reference to equivalent or similar provisions of and circumstances arising under any State or Territory enactment.
18. Should we be liable for breach of a condition or warranty implied by Division 1 of Part 3-2 of the ACL then, to the full extent permitted by law, our liability for the breach will, subject to section 64A of the ACL, be limited to one of the following as determined by us:
  - A) The replacement of the goods or the supply of equivalent goods.
  - B) The payment of the cost of replacing the goods or of acquiring equivalent goods.
19. Security for performance
  - 19.1 The guarantor(s) (if any) irrevocably, jointly and severally do as follows:
    - A) Guarantee to us the due and punctual performance of all obligations which you owe to us under the agreement.
    - B) Indemnify us against any loss whatsoever that we may suffer as a result of you failing to duly and punctually perform any obligation that you owe to us under the agreement.
  - 19.2 To the full extent permitted by law and in consideration of us deferring the time for payment of goods supplied to you under these terms and conditions, you and the guarantor(s) (if any) jointly and severally ("charger") charge to us all of your right, title, estate and interest, which the charger has now, or may in future have, in any real property (whether or not as trustee of a trust). This charge secures to us the payment of all amounts payable or remaining unpaid, now or in the future, by you to us. The charger acknowledges that we may lodge a caveat against the title to any such real property to protect our rights under this clause.
  - 19.3 The applicant and the guarantors represent and warrant to us that the application for credit made by the applicant to us is made wholly or predominantly for commercial or business purposes, and that, accordingly, the National Credit Code does not apply in respect of these terms and conditions of trade.
20. Subject to any legislation to the contrary;
  - A) all terms, conditions, representations and warranties (whether express or implied by statute, general law or otherwise), other than the ones set out in this schedule, are excluded to the full extent permitted by law, and
  - B) to the full extent permitted by law, we are not liable for any injury to or death of any person, or loss (including loss of profits or consequential loss) or damage to property arising from any act or omission by you, us or any other person (including any loss or damage arising from our negligence), and
  - C) you indemnify us against;
    - i) any claims made against us by any third party in respect of any loss, damage, death or injury as is set out in 20(b), and
    - ii) all losses and expenses which we may suffer or incur due to your failure to observe fully your obligations under the agreement.
21. We will not be responsible for non-delivery or delay in delivery of any goods due to any cause beyond our reasonable control, notwithstanding that the cause may be operative at the time of entering the contract of sale. Where such non-delivery or delay occurs, we may deliver the goods not delivered or delayed at any subsequent time and you must accept and pay for them.
22. When we are to perform a contract of sale by more than one delivery, our failure to make anyone or more of these deliveries will not operate as a repudiation of the contract by us in respect of all or any of the other deliveries.
23. Where we give a date of intended delivery, this will be subject to the goods ordered being available and our being able to make the delivery on that date.
24. If you fail to keep the goods in the condition they were in when delivered, you will be deemed to have accepted them as delivered.
25. Our agreement to continue to deliver or sell goods to you is always conditional upon our being satisfied about your ability to pay and comply with these terms and conditions. If we cease to be so satisfied, we may suspend and/or terminate deliveries and shall not be liable in any way for any claim, damage, expense or cost suffered by you.
26. Should any part of these terms and conditions be held to be void, unenforceable or unlawful, these terms and conditions will be read and enforced as if the void or unlawful provisions have been deleted.
27. Our rights under these terms and conditions are in addition to and do not limit whatever other rights or remedies we may have in law or equity.
28. The agreement and each contract of sale between you and us will be governed by the laws of the State of Victoria.
29. Privacy Statement
  - 29.1 This privacy statement relates to the collection, use, storage and disclosure of personal information about you and each guarantor (if any) in all communications with us.
  - 29.2 We collect personal information about you and each guarantor (if any) now and in the future for;
    - A) the primary purpose of assessing and processing your credit application and preparing the necessary documentation to implement the credit facility, and
    - B) the related purposes of;
      - i) administering the credit facility and performing administrative tasks, and
      - ii) managing the products we provide to you, and

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- iii) unless you ask us not to, providing you with information about other products or services which we consider may be of benefit to you, and
  - iv) managing our internal business operations.
- 29.3 If you or (a guarantor if any) do not provide the personal information sought from time to time, it may mean that we cannot supply you with our products on a credit basis.
- 29.4 We may disclose your or any guarantor's personal information (as necessary):
- A) to our agents, contractors or third-party service providers that provide financial, administrative, accounting, auditing, legal or other services in connection with the operation of our business, and
  - B) to credit providers for credit related purposes such as credit-worthiness, credit rating, credit provision and financing in accordance with the law, and
  - C) to credit-reporting and fraud-checking agencies in accordance with the law, and
  - D) to your representatives (e.g. your authorized representatives or legal advisers) with your consent, and
  - E) to our related companies, and
  - F) where the law requires or permits us to do so (e.g. to law enforcement agencies), and
  - G) in other circumstances if you consent.
- 29.5 Under Australian privacy laws, you or any guarantor will be entitled to request access to personal information held by us about you or the relevant guarantor (as the case may be), and to ask us to correct this information where you or the relevant guarantor believe it is incorrect or out of date. No fee will be charged for an access request. You may be charged the reasonable expenses incurred in giving you any information you have requested (e.g. searching and photocopying costs).
- 29.6 If you or any guarantor would like to access personal information that we hold, or to obtain more information about each of your rights or our privacy policy, please contact the manager, either in writing at the address specified in the heading of this agreement, or by phone or email as set out in the said heading of this agreement. By completing this application, you agree to us collecting, using, storing and disclosing personal information about you, and each guarantor (if any) agrees to us collecting, using, storing and disclosing personal information about them, in accordance with this privacy statement.
30. Except where the contrary intention appears, each amount payable by you to us in respect of a taxable supply by us to you is expressed as a GST exclusive amount, and, you must, in addition to that amount and at the same time, pay to us the GST payable in respect of the supply. You are not obliged under this clause to pay the GST on a taxable supply until we give you a valid tax invoice for the supply. This tax invoice will, amongst other things, specify the price of each item supplied as well as the amount of GST payable in relation to each supply.
31. References in this schedule to "the agreement" means each agreement between us, the customer and the guarantor (if any) of which these terms and conditions are expressed to form part, and "these terms and conditions" means the terms and conditions set out above as amended or supplemented from time to time in accordance with the agreement.
32. To the extent that these terms and conditions, or any provision of these terms and conditions, is inconsistent with the terms and conditions contained on a tax invoice from us to you, these terms and conditions will prevail.
33. Any failure by us to enforce any terms or exercise any right under the agreement does not constitute a waiver of that term or right.
34. We may amend these terms and conditions without notice, from time to time.