

AUSTRAL LOCK PTY LTD
ABN 12 133 801 662
TERMS AND CONDITIONS OF SALE

The following terms and conditions of sale apply to the sale and delivery of product from Austral Lock Pty Ltd to another party.

1. DEFINITIONS

"**AS 4145.2**" means Australian Standard "Locksets" incorporating the most recent amendment.

"**Carrier**" means a common carrier including Australia Post.

"**Customer**" means a person or company whose order for the purchase of goods is accepted by the Supplier.

"**Delivery Date**" means the date goods are placed on board a Carrier at the Supplier's warehouse, irrespective of who bears the cost of the freight.

"**Maintenance Instructions**" means instructions providing the maintenance requirements and instructions for the goods including a maintenance log.

"**MD**" means Managing Director of the Supplier.

"**Order Date**" means the date on which an order for goods is received by the Supplier.

"**Quotation**" means the document of quotation submitted by the Supplier to the Customer.

"**Receiving Address**" means the address provided by the Customer to which the goods are to be transported and left.

"**Receiving Date**" means the date goods are left at the Receiving Address.

"**Sales Invoice**" means a document issued by the Supplier to the Customer stating amount(s) charged for the goods delivered.

"**Special Order Goods**" means goods packaged, coated or made at the request of the Customer specifically for the Customer.

"**Supplier**" means Austral Lock Pty Ltd (ABN 12 133 801 662).

"**Terms**" means these terms and conditions of sale.

2. INTERPRETATION

- a) The headings used in this document do not form part of the Terms, but exist for convenience only.
- b) Where the context admits or requires, words denoting a singular number shall include the plural number, those denoting a given gender shall include all other genders, and those denoting natural persons shall include corporations.

3. GENERAL

- a) Any order placed by a Customer will be taken to be an order incorporating the Terms.
- b) Subject to 3(c), any terms and conditions of the Customer's order deviating from or inconsistent with the Terms are expressly rejected by the Supplier and the Supplier expressly rejects any variations to the Terms.
- c) The Supplier may vary the Terms but only by notice in writing from the MD to the Customer. The Customer agrees that the purchase of any goods after the date of a notice of variation will be deemed to be an acceptance of such varied terms and conditions.
- d) Should there be any variation to any of the information supplied by the Customer to the Supplier or in the structure or nature of the Customer's business (such as a conversion to or from a company or trust) the Customer shall forthwith notify the Supplier in writing.
- e) The Terms and all obligations hereunder shall be binding on the Customer's personal representatives, successors and permitted delegates and shall be for the benefit of the Supplier's successors and delegates.

4. PRICE & QUOTATIONS

- a) A Quotation is not an offer to sell goods to the Customer. No contract for the supply of goods shall exist between the Supplier and the Customer until the Supplier has accepted a Customer's order for goods. (Such acceptance of the Customer's order may be made and communicated by the Supplier in writing or by an overt act of acceptance). The Supplier may accept or refuse any order for goods in its absolute discretion and may make its acceptance of an order conditional upon receiving a satisfactory credit assessment of the Customer.
- b) Prices within Quotations and the Supplier's price list are Free-On-Board (F.O.B. or FOB) Brooklyn, Victoria, Australia, 3012.
- c) The price is the price in Australian Dollars for the goods at the time an order is accepted from the Customer and is exclusive of any applicable goods and services tax, sales tax, and all other government duties or levies which must be paid to the Supplier by the Customer when payment for the goods is due.

d) Prices quoted within Quotations or on the Supplier's price list are based on the Supplier's estimated cost of production, manufacture or supply at the time of quotation and may be altered without notice to the Customer if there is any increase in the Supplier's costs between the date of quotation and the date of delivery. If there is an increase in the cost to the Supplier for the goods between the Order Date and the Delivery Date which is beyond the control of the Supplier, the increase shall be to the account of the Customer.

e) Prices appearing on packaging are recommended prices only and there is no obligation for the Customer to comply with these recommendations.

f) Price discounts and rebates take effect from the time the Customer has been advised in writing by the MD and all such discounts and rebates expire at the latest on the day that is six months from the date of advice.

5. ACCOUNT TERMS

a) Payment for all goods delivered in any calendar month is due on or before the last trading day of the following month, but the Supplier reserves the right to require payment in cash in full prior to delivery should the credit worthiness of the Customer at any time become, in the Supplier's opinion, unsatisfactory.

b) The Customer shall pay any legal costs (on a solicitor/client indemnity basis), stamp duties and other expenses payable on the Terms or any credit application, guarantee or other security documents signed by the Customer together with any collection costs or dishonoured cheque fees.

c) The Supplier may withdraw the Customer's credit facilities at any time or vary the Customer's credit limit.

d) The Supplier will be entitled to offset amounts owed to the Supplier by the Customer against money owing to the Customer, on any account whatsoever.

e) The Supplier may refuse to accept an order without notice if payment is not received by the due date and the Supplier reserves the right to suspend or cancel all trade discounts or rebates in the event that the Customer fails to comply with the Terms.

6. GST

a) In this clause the expressions "GST", "tax invoice", "recipient" and "taxable supply" have the meanings given to those expressions in A New Tax System (Goods and Services Tax) Act 1999 (Cth).

b) Unless otherwise expressly stated, all amounts stated to be payable by the Customer under the Terms are exclusive of GST.

c) If GST is imposed on any supply made under or in accordance with the Terms, the recipient of the taxable supply must pay to the Supplier an additional amount equal to the GST payable on or for the taxable supply. Payment of the additional amount will be made at the same time as payment for the taxable supply is required to be made in accordance with the Terms, subject to the provision of a tax invoice.

7. DESCRIPTION

Any description of the goods is given by way of identification only and the use of that description does not constitute a sale by description.

8. SPECIFICATIONS

The Supplier reserves the right to change without notice the construction, design, dimensions and performance of goods and related documentation and packaging.

9. IMPLIED TERMS

All conditions and warranties expressed or implied by statute, the common law, equity, trade, custom or usage or otherwise are expressly excluded to the maximum extent permitted by law.

10. SEVERANCE

Any provision (or part thereof) in the Terms held to be prohibited or unenforceable in whole or in part in any jurisdiction is ineffective as to that jurisdiction to the extent of the prohibition or unenforceability. That does not invalidate the remaining provisions of the Terms nor affect the validity or enforceability of that provision in any other jurisdiction.

11. GUARANTEE

a) The goods are guaranteed by the Supplier to be free from faulty workmanship and materials for 12 months from the original Delivery Date. The Supplier warrants that goods tested in accordance with AS 4145.2 have achieved the level of performance indicated on the packaging and in trade literature.

b) The guarantee contained in this clause 11(a) will not apply if:

(i) the fault has been caused by:

- (A) improper use;
- (B) improper installation;
- (C) improper service;
- (D) misuse;
- (E) abuse;
- (F) accidental or intentional damage;
- (G) unauthorised repair or modification;
- (H) use contrary to instructions provided by the Supplier;
- (I) use of components not manufactured by the Supplier;
- (J) unauthorised repair or modification; or
- (K) factors outside the control of the Supplier;

(ii) maintenance and servicing has not been undertaken according to the Maintenance Instructions provided by the Supplier with the goods;

(iii) the maintenance log is not properly maintained in accordance with the Supplier's instructions; or

(iv) the goods have been used in an environment that:

- (A) requires more usage;
- (B) is more corrosive; or
- (C) is more severe

than the environment for which the goods are guaranteed by clause 11(a).

c) The guarantee contained in clause 11(a) will not apply to tarnish or excessive wear on soft finishes such as brass which may deteriorate under some climatic conditions or conditions of use.

d) The guarantee contained in clause 11(a) will not apply to goods which are not accompanied by a copy of the original invoice showing the original date of delivery.

12. LIABILITY

a) So far as the law permits, the liability of the Supplier for a breach of a condition or warranty that cannot be excluded is limited, at the Supplier's option, to:

- (i) the replacement or repair of the goods;
- (ii) the supply of equivalent goods; or
- (iii) the cost of replacing or repairing the goods or of acquiring equivalent goods.

b) The Customer agrees to release, hold harmless and indemnify the Supplier to the maximum extent permitted by law from and against any liability whatsoever and howsoever arising (including, without limitation, from negligence or wilful misconduct on the part of the Supplier or others) in connection with the sale of the goods by the Supplier.

c) Without limiting the scope of paragraph (b), the Customer agrees to release, hold harmless and indemnify the Supplier to the maximum extent permitted by law for the cost of:

- (i) removing faulty or defective goods from assemblies in which they have been installed (placed, attached or fixed);
- (ii) installing replacement goods into the assemblies from which faulty or defective goods have been removed;
- (iii) collecting faulty or defective goods from persons to whom the Customer has sold goods supplied by the Supplier;
- (iv) delivering replacement goods to persons to whom the Customer has sold faulty or defective goods; and
- (v) freight or any other cost incurred in returning faulty or defective goods to the Supplier's warehouse.

13. INDIRECT LOSS

So far as the law permits, the Supplier is not liable in any way for any indirect or consequential loss or loss of profit including, without limitation, any loss by reason of delay, defective or faulty materials or workmanship, negligence or any act or matter or thing done, permitted or omitted by the Supplier.

14. CANCELLATION

- a) The Customer does not have a right to cancel or change an order without written approval from the Supplier.
- b) In the event the Supplier provides its written consent to the Customer to cancel or change an order, it does so without prejudice to any other rights the Supplier may have.
- c) The Customer shall indemnify the Supplier for any loss, damage or expense incurred by the Supplier should the Customer cancel an order, or any part thereof, without the Supplier's written approval.

15. DELIVERY

- a) Goods will be delivered or deemed to be delivered when the goods are placed on board a Carrier at the Supplier's warehouse, irrespective of who bears the cost of the freight.
- b) The Customer authorises the Supplier to act as his agent to arrange for the goods to be placed on board a Carrier nominated by the Customer (if the Customer nominates a Carrier) or, if the Customer does not nominate a Carrier, then to be placed on board a Carrier chosen by the Supplier, and to have the goods transported to the Receiving Address and left at that address whether or not someone is present to take the delivery.
- c) The Supplier is not liable on any basis whatsoever for loss suffered by the Customer after delivery.
- d) The Supplier reserves the right to impose a reasonable charge for storage if the Customer does not provide a Receiving Address within 14 days of a request by the Supplier for such information.
- e) The Supplier is not obliged to obtain a signed receipt or other acknowledgment from any person at the nominated Receiving Address, but the Supplier will direct the Carrier to obtain a signed receipt or other acknowledgment from the person who takes delivery if in fact someone does take delivery. Neither the Supplier nor the Carrier are obliged to ensure that the person taking delivery is authorised by the Customer to sign or otherwise take delivery.
- f) Any times quoted for delivery are estimates only and the Supplier shall not be liable to the Customer for any failure to deliver or for delay in delivery of goods for any reason including, without limitation:
 - (i) act of God, lightning, fire, flood, explosion, hostility, civil commotion, act of terrorism;
 - (ii) strike, lock-out, industrial dispute or other labour difficulty;
 - (iii) breakage, accident or other damage to or failure of machinery or equipment, whether of the Supplier's or of any other person on which the Supplier is relying, directly or indirectly, to meet the Supplier's obligations to the Customer;
 - (iv) unavailability or shortage of raw materials, labour, skilled labour, power supplies or transport facilities;
 - (v) failure or inability to obtain licences or the effect of any applicable laws, order, rules or regulations of any government or competent authority; or
 - (vi) any other cause whatsoever whether or not beyond the control of the Supplier.
- g) The Customer shall not be relieved of any obligation to accept or pay for goods by reason of any delay in delivery as a result of events referred to in clause 15(f) above or any other cause whatsoever.
- h) Short delivery, late delivery or wrongful delivery will not be a breach of the contract and notice of shortfall must be provided in writing to the Supplier within 5 business days of the goods being left at the Receiving Address. Any claim which the Customer does not notify within that time (time being of the essence) will be taken to have been absolutely waived.
- i) The Supplier undertakes to rectify any shortfall as referred to in clause 15(h) above within 14 business days of the notice in writing of the shortfall to the Supplier if proof of the shortfall is provided by the Customer to the Supplier to the MD's satisfaction.
- j) If the Supplier determines that it is or may be unable to deliver within a reasonable time or at all the contract may be cancelled by the Supplier. If the contract is cancelled, the Customer will have no claim against the Supplier for any damage, loss, cost or expense.

16. ACCEPTANCE & RETURNS

- a) All goods shall be deemed to have been inspected by the Customer and agreed to be in accordance with the contract and the Terms and accepted by the Customer unless notification to the contrary is received in writing by the Supplier within 5 business days from the Receiving Date. If the Customer fails to provide such notice then the Customer shall be deemed to have accepted the goods.
- b) Special Order Goods are not returnable.
- c) Goods other than Special Order Goods cannot be returned except with the Supplier's prior agreement in writing accompanied by a Return Authority Number issued by the Supplier.
- d) Returned goods will not be treated as free from damage unless they are returned:
 - (i) in original condition;
 - (ii) in original packaging;
 - (iii) free from damage and blemishes; and
 - (iv) accompanied by a copy of the Sales Invoice.
- e) goods returned will, at the Supplier's discretion, be subject to a handling fee of 15% and the cost of returning goods rests with the Customer.

17. RISK AND PROPERTY

- a) The risk or loss of, or damage to, the goods will pass to the Customer on delivery and the Customer will insure the goods until sold by the Customer.
- b) Property in, and ownership of, the goods will not pass from the Supplier to the Customer until payment in full of the purchase price of the goods and all other amounts owing to the Supplier by the Customer.
- c) Until property passes to the Customer:
 - (i) the Customer will hold the goods as fiduciary and bailee for the Supplier;
 - (ii) the goods must be stored separately and in a manner to enable them to be identified as goods of the Supplier and cross-referenced to particular invoices;
 - (iii) the Supplier, its employees or agents, are entitled to enter the Customer's premises between 9.00am and 5.00pm on any business day to inspect the goods;
 - (iv) unless otherwise notified in writing by the Supplier and subject to paragraph (g), the Customer is authorised to resell the goods by bona fide sale at full market value and in the ordinary course of its business; and
 - (v) the proceeds of goods sold by the Customer are to be held in trust for the Supplier [and must be paid immediately into a separate account and must not be mixed with any other money, including funds of the Customer].
- d) If the Supplier uses the goods in some manufacturing or construction process of its own or some third party, then the Customer must hold such part of the proceeds of such manufacturing or construction process as relates to the goods in trust for the Supplier. Such part shall be deemed to equal in dollar terms the amount owing by the Customer to the Supplier at the time of receipt of such proceeds.
- e) If payment is not made by the Customer to the Supplier on the due date, the Customer must deliver the goods to the Supplier on demand. If the Customer does not comply with such a demand, the Supplier, its employees or agents, are entitled:
 - (i) to enter the Customer's premises at any time to do all things necessary in order to take possession of the goods and the Customer:
 - (A) must procure the consent of all other persons having any interest in the premises where the goods are situated to entry to those premises by the Supplier, its employees or agents; and
 - (B) indemnifies the Supplier against any claim, loss, liability, cost and expense that may be incurred or sustained by the Supplier, its employees or agents, as a result of the entry of those premises where the goods are situated; and
 - (ii) with or without taking possession of the goods, to sell them as the Supplier sees fit.

- f) The Customer must pay to the Supplier the costs and expenses incurred by the Supplier of legal advisers, mercantile agents and other agents acting on the Supplier's behalf in respect of any enforcement of the Terms, or recovery or attempted recovery of either the money owing by the Customer to the Supplier or possession of the goods.
- g) The Customer's right to hold and sell the goods will immediately cease if an administrator or controller within the meaning of section 9 of the Corporations Act 2001 (Cth) or similar officer is appointed to all or any assets or undertaking of the Customer or an order is made or resolution passed for the winding up of the Customer or the Customer is deregistered. In any such case, and without the need for notice or demand by the Supplier, the Customer acknowledges any sale or purported sale of the goods will not be in the ordinary course of the Customer's business and the proceeds of any goods sold in such circumstances will be held on trust for the Supplier by the administrator, controller or similar officer as the case may be, or if there is no such officer, by the Customer.

18. DEFAULT

a) If:

- i) there is any default or failure by the Customer in making due and punctual payment to the Supplier of any monies owing by the Customer;
 - ii) an administrator, liquidator or provisional liquidator is appointed in respect of the Customer;
 - iii) a receiver, receiver and manager, administrator or controller is appointed in respect of any assets or group of assets of the Customer;
 - iv) the Customer goes into bankruptcy or is wound up;
 - v) the Customer becomes, admits in writing that it is, or is declared by a court to be unable to pay its debts as and when they fall due;
 - vi) the Customer dies; or
 - vii) there is a breach by the Customer of any of the Terms,
- then a Default Event has occurred.

b) If a Default Event occurs, all monies payable by the Customer to the Supplier shall, at the Supplier's election, become immediately due and payable notwithstanding the due date for payment shall not have expired.

c) If a Default Event occurs, the Supplier may, without prejudice to any other rights it may have, do any or all of the following:

- i) withdraw any credit facilities that may have been extended to the Customer;
- ii) withhold any further deliveries of goods;
- iii) in respect of goods already delivered, enter onto the Customer's premises to recover and resell the goods for its own benefit; and
- iv) recover from the Customer the cost of materials or goods acquired for the purpose of future deliveries.

19. PERFORMANCE AND REPRESENTATIONS

The Customer acknowledges that neither the Supplier nor any person purporting to act on its behalf has made any representation or given any promise or undertaking which is not expressly set out in writing, whether as to the fitness of the goods for any particular purpose or any other matter.

20. INSTALMENTS

The Supplier reserves the right to deliver goods by instalments and each instalment will be taken to be sold under a separate contract. Failure of the Supplier to deliver any instalment or deliver any instalment on time will not entitle the Customer to cancel the balance of the order. If the Customer defaults in payment for any instalment, the Supplier may elect to treat the default as a breach of contract relating to each other instalment.

21. WAIVER

Failure by the Supplier to insist on strict performance of any term, warranty or condition of the contract will not be taken as a waiver of it or of any rights the Supplier may have and no waiver will be taken as a waiver of any subsequent breach of any term, warranty or condition.

22. SUB-CONTRACTING

The Supplier reserves the right to sub-contract the production, manufacture or supply of the whole or any part of the goods or of any materials or services to be supplied.

23. LITERATURE AND SUITABILITY OF GOODS

- (a) Literature provided by the Supplier to the Customer in conjunction with the supply of goods (including information brochures, data information sheets and instruction sheets) contains information concerning the limitations of the goods and the manner in which, and the purposes for which, the goods are suitable for use. That literature must be read and considered carefully by the Customer.
- (b) If the Customer resells the goods, the Customer undertakes to the Supplier that it will:
 - (i) provide each acquirer of the goods with all of the literature provided by the Supplier to the Customer which relates to the goods;
 - (ii) notify each acquirer that the literature contains information concerning the suitability of the goods and instructions and warnings concerning their use and should be read and carefully considered by the acquirer; and
 - (iii) impose the obligations in this clause 23 on each acquirer so that, in the event the acquirer wishes to resell the goods, or transform the goods and sell the transformed goods, the acquirer is under the same obligations as those imposed on the Customer by this clause 23.
- (c) If the Customer transforms the goods and sells the transformed goods, the Customer undertakes to the Supplier that it will:
 - (i) provide each acquirer of the transformed goods with all of the literature provided by the Supplier to the Customer which relates to the goods;
 - (ii) notify each acquirer that the literature contains information concerning the suitability of the goods and instructions and warnings concerning their use and should be read and carefully considered by the acquirer; and
 - (iii) impose the obligations in this clause 23 on each acquirer so that, in the event the acquirer wishes to resell the transformed goods, or further transform the transformed goods and sell the further transformed goods, the acquirer is under the same obligations as those imposed on the Customer by this clause 23.
- (d) The Customer acknowledges that it alone is responsible for determining the fitness of the Supplier's goods for the purpose for which the Customer intends to use them.

24. INSPECTION

The Customer must:

- (a) notify the Supplier immediately of any defect in the goods of which it becomes aware after delivery;
- (b) take all reasonable steps to mitigate loss (if any) arising as a consequence of the defect;
- (c) if the Customer resells the goods, the Customer undertakes to the Supplier that it will impose on the acquirer of the goods:
 - (i) an obligation to notify immediately the Customer and the Supplier of any defect in the goods of which it becomes aware after delivery and to take all reasonable steps to mitigate loss (if any) arising as a consequence of the defect; and
 - (ii) impose the obligations in this clause 24 on each acquirer so that, in the event the acquirer wishes to resell the goods, or transform the goods and sell the transformed goods, the acquirer is under the same obligations as those imposed on the Customer by this clause 24; and
- (d) if the Customer transforms the goods and sells the transformed goods, the Customer undertakes to the Supplier that it will impose on the acquirer of the transformed goods:
 - (i) an obligation to notify immediately the Customer and the Supplier of any defect in the transformed goods of which it becomes aware after delivery and to take all reasonable steps to mitigate loss (if any) arising as a consequence of the defect; and
 - (ii) impose the obligations in this clause 24 on each acquirer so that, in the event the acquirer wishes to resell the transformed goods, or further transform the transformed goods and sell the further transformed goods, the acquirer is under the same obligations as those imposed on the Customer by this clause 24.

25. TRUSTS AND TRUSTEES

Where the Customer is a trustee:

- a) The Customer agrees to produce a stamped copy of the trust deed (with all amendments) if and when requested by the Supplier.
- b) The Customer warrants that it has full power and authority to enter into this Agreement on behalf of the trust and that it shall be bound by the Terms both personally and as trustee, irrespective of whether or not it discloses to the Supplier that it is a trustee at the time of entering into any credit agreement with the Supplier.

26. CREDIT ENQUIRIES

The Customer acknowledges and agrees that the Supplier may obtain from or provide to a credit reporting agency or other agency a report containing information of a type permitted by law.

27. CERTIFICATE

A statement in writing signed by the Accountant of the Supplier stating monies payable by the Customer to the Supplier shall be prima facie evidence of the amounts so payable.

28. NOTICE

- a) Notice to be given by the Customer to the Supplier must be delivered personally or sent by ordinary prepaid post to the Accountant of the Supplier at the Supplier's address at 8-14 Ross St, South Melbourne, Victoria 3205, and unless the contrary is proved shall be taken as delivered on the second business day following posting.
- b) Notice to be given to the Customer by the Supplier must be delivered personally, or sent by ordinary prepaid post to the Customer's last known address and unless the contrary is proved shall be taken as delivered on the second business day following posting.
- c) Invoices and statements are deemed received by the Customer on the second business day after posting by ordinary prepaid post.

29. ENTIRE AGREEMENT

The Terms shall constitute the entire agreement between the Supplier and the Customer in relation to the sale and delivery of goods and any previous agreements, understandings and negotiations shall cease to have any legal status or effect.

30. LAWS TO GOVERN PROVISIONS OF AGREEMENT

- a) Unless varied by notice in writing by the Supplier, this agreement shall be deemed to have been made in the State of Victoria in the Commonwealth of Australia (**Victoria**) and the Terms shall be governed by and construed in accordance with the laws of Victoria.
- b) Unless varied by notice in writing by the Supplier, the Supplier and the Customer submit to the exclusive jurisdiction of the courts in the central business district of Melbourne, Victoria.