

## **STANDARD TERMS AND CONDITIONS OF SUPPLY OF GOODS**

### **1. Definitions**

- a) "Concept" means McNaughtans Pty Ltd t/a Concept Latch Lock & Hinge ABN 49 103 876 437.
- b) "Buyer" means any person, body corporate or entity which purchases or orders the Goods from Concept.
- c) "Conditions" means these terms and conditions for the supply of the Goods by Concept to the Buyer, as amended or varied in writing by Concept.
- d) "Contract" means a contract between Concept and the Buyer for the sale of the Goods.
- e) "Credit Account Application Form" means Concept's Credit Account Application Form, which has been signed by or on behalf of the Buyer.
- f) "Goods" means all goods ordered by the Buyer from Concept or delivered by Concept to the Buyer or to be delivered by Concept to the Buyer.

### **2. Application of Conditions**

- a) These Conditions apply to all orders placed by the Buyer with Concept unless otherwise agreed in writing by a duly authorised officer of Concept.
- b) Any order made by the Buyer is not binding on Concept until accepted by Concept in writing. A Contract will be formed upon the written acceptance by Concept of an order for the Goods by the Buyer. The Buyer acknowledges that it will be bound by these Conditions which will form part of the Contract. The Contract may only be varied with Concept's prior written consent. To the extent any conflict exists between these Conditions and any other documentation or correspondence forming part of the Contract, these Conditions are paramount and prevail.
- c) accepted in writing by a duly authorised officer of Concept.
- d) These Conditions supersede all terms and conditions of sale previously issued by Concept.
- e) Any quotation issued by Concept is not and will not be construed as an offer capable of acceptance by the Buyer.

### **3. Concept may decline order**

a) Concept reserves the right, in its sole discretion, to decline any order or part thereof. Any order or part thereof not accepted is deemed cancelled. Concept requires that any order of Goods be in writing.

### **4. Cancellation of Orders**

a) An order accepted by Concept cannot be cancelled without Concept's prior written consent (in its sole discretion). No application for cancellation or delay in delivery will be considered unless made by the Buyer in writing to Concept. Concept will consider an application for cancellation or delay in delivery in its sole discretion.

### **5. Price**

a) Unless otherwise agreed in writing by the parties, prices are as set out in the current price list issued from time to time by Concept plus any GST payable by Concept and are subject to variation by Concept without notice. If between the date of acceptance of an order and issue of an invoice, there is an increase in the cost to Concept of supplying the Goods which is beyond the control of Concept, then the Buyer acknowledges and agrees that Concept may increase the amount of the invoice in line with the increase in cost. If this occurs, the Buyer agrees to be bound by the increase of the amount of the invoice.

b) Unless Concept expressly advises in writing, the price for any Goods does not include the costs of delivery of the Goods and all costs, charges or expenses incurred by Concept in relation to delivery are payable by the Buyer. Any GST payable by Concept in respect of the supply of the Goods will be paid by the Buyer to Concept. The Buyer must supply Concept with its ABN prior to, or at the time of, placing an order with Concept.

### **6. Credit account**

a) By completing the Credit Account Application Form, the Buyer acknowledges and agrees that it is bound by these Conditions.

b) Credit limits established at the time of opening the Buyer's account will be strictly adhered to and enforced by Concept. At the time of receiving the Buyer's orders, if the Buyer has exceeded its credit limit, Concept will, at its discretion, determine whether to place additional limits and restraints on the Buyer's account.

c) Concept will apply a monthly billing cycle for the Buyer's credit account. During each month, Concept will provide the Buyer with a statement of account in respect of the preceding month.

d) If a credit account is opened in the names of 2 or more persons, these persons are jointly & severally liable to pay the amounts owing or due under the credit account.

## **7. Payment**

a) Concept will invoice the Buyer either on order or delivery of the Goods or at Concept's discretion.

b) Unless otherwise agreed in writing by Concept, payment by the Buyer to Concept will be made on or before the last day of the month following the month in which the invoice was issued. Time for payment is of the essence of the Contract. Where payments are overdue, Concept may, in addition to any other rights it may have, in its sole discretion, either cancel orders under clause 4 or suspend delivery of outstanding Goods under clause 9.

c) Concept Latch reserves the right at all times to suspend or discontinue the supply of goods to the Buyer without being obliged to give any reason for its action.

d) If the invoice price is not paid by the due date then interest will accrue on that amount from the date of delivery of the Goods until the price is paid in full. Interest will be paid at a rate of 12% per annum. Interest will accrue on a daily basis and be payable on demand.

## **8. Payment Default**

a) If the Buyer defaults in payment or breaches these Conditions then it will be liable for all costs incurred by Concept and will indemnify Concept against any loss, liability, charge, expense, outgoing or payment which Concept suffers, incurs or is liable for in respect of the recovery of monies owing by the Buyer to Concept.

## **9. Delivery**

a) Concept will deliver Goods purchased by the Buyer to the Buyer's nominated warehouse or location within the capital city in which the Buyer predominantly carries on business, or to such other place as the Buyer specifies and Concept agrees. Concept reserves the right to make deliveries of any order by instalments in which case each instalment will be deemed to be the subject of a separate contract governed by these Conditions for which the Buyer must separately pay. Subject to clause 14, Concept will not be liable in any way for any failure or delay in delivery or for any loss or damage resulting directly or indirectly from any failure or delay in delivery of the Goods irrespective of whether such failure or delay is negligent or within Concept's control or otherwise.

b) If, due to any act, matter or thing beyond the control of Concept, the address for delivery is unattended, delivery cannot otherwise be affected or the Goods cannot be dispatched,

Concept, in its sole discretion, may store the Goods at the Buyer's risk and expense or take such other steps as it considers appropriate.

- c) If Concept delivers the Goods then, unless otherwise agreed in writing by Concept, the Goods must be unloaded by the Buyer immediately on arrival at the specified destination.
- d) Concept reserves the right to withhold deliveries if:
  - (i) Concept, in its sole discretion, considers that the financial condition of the Buyer so warrants and that such action is advisable to protect Concept's interests; or
  - (ii) the terms of payment for any Goods are not strictly adhered to by the Buyer.
- e) Any delivery dates and/or times notified by Concept to the Buyer are estimates only, and Concept is not liable to the Buyer or to the Buyer's customers for any costs, charges, claims or fees which may be claimed by the Buyer or by the Buyer's customers as a result of the late delivery or non-delivery of the Goods.
- f) Concept may in its sole discretion, authorise a credit on the Buyer's account. Goods will only be accepted for credit to the Buyer's account if authorised by Concept in writing.

#### **10. Acceptance**

- a) To the fullest extent permitted by law, the Buyer has five (5) business days from the delivery of Goods to accept or reject the Goods in writing and if the Buyer fails to notify Concept within that period, the Buyer is deemed to have accepted such Goods.

#### **11. Return of Goods**

- a) To the fullest extent permitted by law, no Goods will be returned unless:
  - (i) prior authorisation has been given by Concept;
  - (ii) the correct invoice number is quoted on the Buyer's return docket;
  - (iii) the returns are made within five (5) business days after delivery; and
  - (iv) the reason for return is clearly stated on the Buyer's return docket.
- b) The Buyer will not be entitled to return the Goods to Concept except as stated above or with the written consent of Concept, at the discretion of Concept. All Goods returned will be subject to a handling charge of 25% of the invoice price of the Goods and the Buyer will pay all return freight costs. Without limiting the generality of the foregoing, Concept and the Buyer agree that, to the fullest extent permitted by law, the Buyer will not be entitled in any

circumstances to return Goods which Concept has acquired specifically for and at the request of the Buyer.

c) Unless otherwise notified by Concept, all Goods are to be returned to:

**McNaughtans Pty Ltd/ Concept Latch Lock & Hinge**

**321 Greens Road,**

**Keysborough, VIC 3173**

d) If Concept has agreed to the return of the Goods pursuant to the Conditions, and the Buyer paid for the Goods with a credit card, any refund of monies due to the Buyer will only be credited to the credit card used by the Buyer in the original Contract.

e) If Concept has agreed to the return of the Goods pursuant to the Conditions, and the Buyer paid for the Goods by cash, any refund of monies due to the Buyer will be made by cheque.

f) If Concept has agreed to the return of the Goods pursuant to the Conditions, and the Goods were credited to the Buyer's credit account, then the credit for the returned Goods will be allocated to the invoice which relates to the original Contract, and will appear on the Buyer's statement for that month.

## **12. Risk**

a) Risk in the Goods passes to the Buyer on delivery of the Goods or on dispatch of the relevant invoice whichever is the earlier and from that time the Buyer assumes all risk of loss and damage to the Goods including without limitation all loss or damage in the course of unloading the Goods following delivery.

## **13. Title to Goods**

a) Notwithstanding any other provisions in these Conditions and notwithstanding that the Buyer has possession of the Goods, title to any and all Goods supplied by Concept will remain with Concept and no legal or equitable interest or property in the Goods whatsoever will pass to the Buyer until the Buyer has paid the full invoice price for all Goods supplied by Concept under all invoices.

b) Until title passes the Buyer must:

(i) refrain from encumbering the Goods;

(ii) store, mark and keep appropriate records for the Goods so that they can at all times be identified and distinguished as the property of Concept and in particular must refrain from mixing the Goods with any Goods owned by the Buyer or any other person;

(iii) allow Concept full and free access to the Buyer's premises where the Goods are located to retake possession of such Goods if the Buyer is in any way in breach of these Conditions;

(iv) not dispose of the Goods unless all of the following conditions are satisfied:

(A) the Goods are disposed to a bona fide sub-purchaser in the ordinary course of the Buyer's business;

(B) no event as specified in clause 15(b)(i)-(iii) has occurred in respect of the Buyer; and

(C) the Buyer maintains records of all disposals of the Goods and permits inspection of the records by Concept promptly upon request; and

(D) hold such money received by the Buyer on account of the Goods as represents the amounts owing for such Goods in trust for Concept in a separate bank account identified as Concept's account and hold that money on trust for Concept until the full amount due for the Goods has been paid.

c) The Buyer indemnifies Concept against any claim, action, damage, loss, liability, cost, expense or payment which Concept suffers, incurs or is liable for in respect of Concept's exercise of its rights under this clause 13.

#### **14. Warranty and Liability**

a) Subject to any condition, warranty or right implied or imposed by the *Competition and Consumer Act 2010 (Cth)* (CCA) or any other law which cannot by law be excluded by agreement, or any express provision in these Conditions, Concept gives no warranties regarding any Goods supplied and all other implied or imposed conditions, warranties and rights are excluded. Where any condition, warranty or right is implied or imposed by law and cannot be excluded, Concept limits its liability for breach of that implied or imposed condition, warranty or right to the fullest extent permitted by law.

b) Subject to the qualifications in section 64A of Schedule 2 of the CCA or any other law, Concept's liability for any breach of any implied or imposed condition, warranty or right in

connection with the supply of Goods is limited to one or more of the following (at the election of Concept):

- (i) replacement of the Goods or supply of goods equivalent to the Goods;
- (ii) repair of the Goods;
- (iii) payment of the cost of replacing the Goods or acquiring goods equivalent to the Goods;
- (iv) payment of the cost of having the Goods repaired.

c) Subject to clauses 14(a) and (b) and despite any implication arising from any other provisions of these Conditions:

- (i) to the fullest extent permitted by law, Concept will only be liable for a safety defect (as defined in the CCA) in any Good if the Buyer notifies Concept in writing of the safety defect (as defined in the CCA) in any such Good within five (5) business days after the date of receipt and Concept accepts such liability;
- (ii) Concept is not liable to the Buyer, its servants, agents or contractors, in contract, in tort (including negligence), under any statute (to the fullest extent permitted by law) or otherwise for, or in respect of, any indirect or consequential loss or damage including without limitation financial loss or expense including loss of opportunity, loss of profits or loss of goodwill suffered by the Buyer or any other person arising directly or indirectly out of or in anyway attributable to the Goods, or their delivery, or the performance of the Contract for the sale of the Goods upon these Conditions even if that loss or damage was in the contemplation of the parties at the time of entry into the Contract; and
- (iii) subject to this clause 14 and the Conditions, the aggregate liability of Concept in contract, in tort (including negligence), under statute (to the fullest extent permitted by law) or otherwise for, or in respect of, any loss or damage arising directly or indirectly out of or in anyway attributable to the Goods, or their delivery, or the performance of the Contract will not exceed 10% of the amount payable to Concept under the Contract.

(d) Where Concept elects to replace the Goods, Concept will credit the cost of the Goods being replaced and will replace them as soon as possible with other Goods of the same or

equivalent kind at the price charged for the original Goods and otherwise upon the same terms and conditions as those to which the original Goods were subject.

#### **15. Termination by Concept**

a) Without prejudice to any of its other rights, powers or remedies, Concept may cancel any order for the delivery of Goods and terminate any contract governed by these Conditions if:

- (i) the terms of payment for any Goods delivered to the Buyer by Concept have not been strictly adhered to by the Buyer;
- (ii) the Buyer defaults under any of its obligations under these Conditions; or
- (iii) the Buyer becomes insolvent, commits an act of bankruptcy or, being a company, a liquidator, provisional liquidator, receiver, receiver and manager, administrator or official manager is appointed in respect of the Buyer, a mortgagee goes into possession of the Buyer's assets or business, an application is made to appoint a liquidator or to have the company wound up, the Buyer is made subject to the supervision of a court or enters into a scheme of arrangement with its creditors or if anything analogous occurs in respect of the Buyer, in which case, Concept will be released from all liability under the Contract.

b) Concept will be entitled to payment for all Goods delivered up to the effective date of termination. Termination of a Contract is without prejudice to the rights of Concept accruing up to the date of termination.

#### **16. Intellectual Property**

a) The supply of Goods to the Buyer does not constitute a transfer of any intellectual property rights in the Goods or any part thereof. The Buyer must not do anything inconsistent with or in infringement of such intellectual property rights. Concept does not warrant that the supply by it and the use by the Buyer of the Goods does not and will not infringe the intellectual property rights of any third party.

#### **17. Concept's Obligations**

a) Notwithstanding any other provision of these Conditions, if the Buyer breaches a term of a Contract, Concept is not bound to perform its obligations under that Contract until the breach is remedied by the Buyer.

b) Concept is not liable for any failure to observe its obligations under these Conditions where such failure is wholly or substantially due to a force majeure event, which includes any cause beyond the control of Concept, including strike, industrial action, war, sabotage,

terrorist activity, national emergency, blockade or governmental action, inaction or request, and act of God.

#### **18. PPSA**

a) Unless the context requires otherwise, terms and expressions used in this clause have the meanings given to them in, or by virtue of, the *Personal Property Securities Act 2009 (Cth)* (PPSA).

b) The Buyer grants Concept a security interest in all Goods to which Seller retains title under these Conditions.

c) The Buyer must:

(i) promptly sign any documents and provide all information reasonably required by Concept to register a financing statement or financing change statement on the Personal Property Securities Register or that Concept may require in connection with such registrations;

(ii) notify Concept in writing of any proposed change to its name or address at least 7 days before the change takes effect;

(iii) indemnify, and upon demand reimburse, Concept for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register, releasing any goods from a security interest perfected by such registration or any other action taken by Concept to comply with the PPSA (including complying with a demand given under section 178 of the PPSA) or to protect its position under the PPSA;

(iv) not register a financing change statement in respect of a security interest without the prior written consent of Concept; and

(v) immediately notify Concept of any material change in its business practices of selling the goods which would result in a change in the nature of proceeds derived from such sales.

d) Any time the Buyer makes a payment to Concept, irrespective of whether the payment is made under or in connection with a particular supply of goods, Concept may apply that payment in any manner and order it sees fit.

e) Sections 96 and 125 of the PPSA do not apply to the security agreement created by these Conditions.

f) The Buyer waives its rights to receive a verification statement in accordance with section 157 of the PPSA.

g) The Buyer:

(i) waives its rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d), 132(4), and 135 of the PPSA and its rights as a grantor and a debtor under sections 142 and 143 of the PPSA; and

ii) agrees that where Concept has rights in addition to those in chapter 4 of the PPSA, those rights will continue to apply and, in particular, will not be limited by section 123 of the PPSA.

## **19. Governing Law.**

a) The Conditions and the Contracts will be governed by and interpreted in accordance with the laws of the State of Victoria, Australia, and the parties agree to submit to the non-exclusive jurisdiction of the courts of that State.

## **20. General**

a) No failure or delay of either party in exercising its rights under the Conditions shall be deemed to be a waiver of such rights unless expressly made in writing by the Party waiving its rights.

b) Notices may be delivered by hand, by mail, by e-mail or by facsimile. Notices will be deemed given:

(i) in the case of hand delivery, upon written acknowledgment of receipt by an officer or other duly authorised employee, agent or representative of the receiving party;

(ii) in the case of posting, three days after despatch;

(iii) in the case of e-mail, upon receipt of a read confirmation message.

(iv) in the case of facsimile, upon completion of transmission.

c) If any provision in these Conditions shall be found or held to be void, the validity of the remaining provisions shall not be affected thereby. The replacing provision and any other required modification shall be subject to new negotiations between the Parties.

d) Neither Party shall assign or transfer to any third party, without the prior written consent of the other Party, any Contract or any of its share or interest therein. Such consent shall not

be unreasonably withheld in case of assignment to an affiliated company of the assigning Party, on condition that the assigning Party shall remain fully responsible towards the other Party for the proper fulfilment of the Contract.

e) Notwithstanding the above clause, Concept may use reliable sub-suppliers and subcontractors in the performance of its obligations.

f) The relationship between Concept and the Buyer during the term hereof shall be solely that of buyer and seller. The Buyer, its agents, employees, representatives or affiliates shall under no circumstances be deemed agents or representatives of Concept, and the Buyer and its agents, employees, representatives or affiliates shall have no right to enter into any contracts or commitments in the name of or on behalf of Concept or to bind Concept in any respect whatsoever.

g) Concept may at its absolute discretion and subject to the terms of the Conditions, sub-contract obligations under the Conditions.

h) Concept may at its discretion, modify or amend these Conditions. Such modification and/or amendment will take effect from a date that is 14 business days following the provision of notice by Concept to the Buyer of the modification or amendment.