

FORTRESS - Terms and Conditions of Sale

1. Definitions

“**Seller**” and “**Supplier**” means Fortress Fencing Systems Pty Ltd T/as Fortress Fencing Systems ABN 27 157 615 567 except where the context requires otherwise.

“**Customer**” means the Customer whose order for the purchase of goods is accepted by the Seller.

“**Goods**” means the goods sold to the Customer by the Seller.

“**Terms and Conditions**” means the terms and conditions contained in this document.

2. Responsibility

Where the consumer guarantees do not apply to the sale between the Seller and the Customer, and to the extent permissible by law, it is the Customer's responsibility to ensure the Goods purchased are suitable and safe for the intended use and that the Customer has the necessary expertise to make this decision.

3. Conditions

These Terms and Conditions shall apply to every sale contract and sale of goods between Seller and Customer. Any terms and conditions on the Customer's order or any statement by Customer deviating from or inconsistent with these Terms and Conditions are expressly rejected by the Seller. An accepted order is not cancellable. No agent or distributor of the Seller has authority to add to, vary or contradict these Terms and Conditions.

4. Not obliged to accept orders

The Seller is not obliged to accept any orders from the Customer. No tender or quotation from the Seller obliges the Seller to accept any order from a Customer. But if the Customer does place an order with the Seller then it becomes binding from the moment the Seller accepts the order even if the Seller does not tell the Customer that it has been accepted.

5. Conditions overrule any other form

These Terms and Conditions prevail even if they are inconsistent with anything in any earlier or later order form or similar document.

6. Prices and Goods and Services Tax (GST)

All prices are subject to change without notice. As a wholesale company prices shall be shown excluding GST and the current percentage GST shall be added. The Seller may increase any agreed sale price after the Seller accepts an order, to cover the full amount of any increases in GST or other taxes and duties such as customs duty, sales taxes, consumption taxes and stamp duty which the Seller incurs in connection with a transaction after the date of the Customers order.

7. Delivery

The Seller reserves the right to apply a freight charge where, in the Seller's option, the cost of delivery is not covered by the current price structure. The Seller also reserves the right to apply fuel levy. The Seller is entitled to invoice the Customer for alternative packaging or delivery arrangements. If the Seller agrees to arrange delivery elsewhere the Seller will deliver any Goods ordered by the Customer at the Customer's cost. The Seller may dispatch an order in one or more instalments. In that case the Customer must pay separately for each instalment and each instalment becomes a separate contract. Non-delivery of one instalment does not affect the contracts for the other instalments that are delivered

or are to be delivered. If part of an order of any Goods is not collected or accepted by the Customer for any reason the Seller may place such Goods or services in storage, including at or on the Sellers premises. The Customer must pay the Seller for all expenses incurred in relation to storing any Goods not collected or accepted and in any case not less than the commercial value of the storage space occupied by the Goods. The Customer takes all of the risk associated with the Goods in all respects from the time of delivery or, if the Seller stores Goods that are ready for delivery then from the time that the Seller notifies the Customer that the Goods are held in storage.

8. Delivery time

Delivery times are estimates only and the Seller is not liable for minor delays in delivery. The Customer is not relieved of any obligation to accept or pay for Goods by reason of any delay in delivery.

9. Shortages

All items listed on the Seller's invoice will be deemed to have been received in good order and condition, without shortage, unless the Seller is notified in writing to the contrary within seven (7) days of the delivery date. When the Customer signs any delivery or consignment note or similar document on receipt of a delivery, that is conclusive evidence that the Customer received the delivery without any shortage or damage that would have been visible on taking delivery without unpacking the goods. The Customer carries all risk of goods in transit where the Customer arranges for carriage.

10. Passing of Risk

The risk in the Goods sold passes to the Customer at the point of delivery at the Supplier's warehouse unless otherwise agreed or subject to clause 7. Where the Goods are transported by the Supplier to the Customer's premises, delivery shall be deemed to take place at the moment that the Goods pass over the side of the vehicle in which they were transported to the Customer's premises. The Customer shall provide or cause to be provided full and clear access for delivery and will at its own expense provide all necessary assistance in unloading the Goods at the nominated place of delivery. Where the Customer has requested special delivery arrangements (i.e. other than Seller delivering to the premises of Customer) risk in respect of Goods shall pass to the Customer upon the Goods leaving the premises of the Seller. The Seller will not in any circumstances accept liability for damage, shortage or loss during transit.

11. Ownership passes to Customer on payment

Goods remain the property of the Seller until payment is made in full plus any associated charges. Where payment is tendered by cheque, payment shall not be deemed to have been received until such cheque is honoured upon presentation at the drawer's Bank. If the cheque is dishonoured the Seller reserves the right to charge the Customer for accounting and bank charges and other fees incurred by it in respect of such dishonour. Upon any default by the Customer in payment of any amount due to the Seller, the Customer irrevocably authorizes the Seller by its servants or agents to enter any premises or vehicle owned, leased or otherwise occupied by the Customer, or by any of the Customer's agents or associates for the purposes of taking possession of the Goods if the Seller has reasonable grounds to expect that the Seller may find any part of the Goods there and the Customer authorizes the Seller by its servants or agents to use all reasonable force to obtain such possession. That applies even if the Seller holds some negotiated instrument or security

for the amount unpaid. If the Customer resells any of the Goods before becoming the owner, the Customer is acting as the Seller's selling agent although only to the absolute minimum extent necessary to protect the Sellers ownership. Until title in Goods has passed to the Customer, the Customer must (a) hold all such Goods as bailee of the Seller (b) store the Goods so as to show clearly that they are the property of the Seller and keep the Goods fully insured at the Customer's expense and hold the proceeds of any insurance claim in respect of the Goods (to the fullest extent of the Customers debts to the Seller) in trust for the Seller; and (c) in the event that any of the Goods are sold by the Customer (even if mixed with other goods), act as the agent of the Seller and hold the proceeds of sale on the Seller's behalf and pay them to the Seller on its request.

12. Personal Properties and Securities Act 2009 (Cth) (“PPSA”)

- 12.1 Defined terms in this clause have the same meaning as given to them in the PPSA.
- 12.2 The Seller and the Customer acknowledge that these Terms and Conditions constitute a Security Agreement and gives rise to a Purchase Money Security Interest (PMSI) in favour of the Seller over the Goods supplied or to be supplied to the Grantor pursuant to these terms and Conditions.
- 12.3 The Goods supplied or to be supplied under these Terms and Conditions fall within the PPSA classification of “Other Goods” acquired by the Customer pursuant to these Terms.
- 12.4 The Seller and the Customer acknowledge that the Seller, as Secured Party, is entitled to register its interest in the Goods supplied or to be supplied to Customer, as Grantor, under these Terms and Conditions on the PPSA Register as Collateral.
- 12.5 To the extent permissible at law, the Customer:
 - (a) waives its right to receive notification of or a copy of any Verification Statement confirming registration of a Financing Statement or a Financing Change Statement relating to a Security Interest granted by the Customer, as Grantor, to the Seller.
 - (b) agrees to indemnify the Seller on demand for all costs and expenses, including legal costs and expenses on a solicitor/client basis, associated with the;
 - (i) registration or amendment or discharge of any Financing Statement registered by or on behalf of the Seller; and
 - (ii) enforcement or attempted enforcement of any Security Interest granted to the Seller by the Customer.
 - (c) agrees that nothing in sections 130 to 143 of the PPSA will apply to these Terms or the Security under these Terms;.
 - (d) agrees to waive its right to do any of the following under the PPSA:
 - (i) receive notice of removal of an Accession under section 95;
 - (ii) receive notice of an intention to seize Collateral under section 123;
 - (iii) object to the purchase of the Collateral by the Secured Party under section 129;
 - (iv) receive notice of disposal of Collateral under section 130;
 - (v) receive a Statement of Account if there is no disposal under section 130(4);
 - (vi) receive a Statement of Account under section 132(3)(d) following a disposal showing the amounts paid to other Secured Parties and whether Security Interests held by other Secured Parties have been discharged.
 - (vii) receive notice of retention of Collateral under section 135;

- (viii) redeem the Collateral under section 142; and
- (ix) reinstate the Security Agreement under section 143.

13. Returns

To the extent permissible by law:

- (a) returns must be first authorised by the Seller and a Goods Return Authority (GRA) No. obtained.
- (b) returns for credit can only be made within 7 days of purchase.

To obtain a Goods Returned No. the date of purchase and the original Invoice No. must be quoted. Goods are to be returned freight prepaid and are to include the Goods Returned No. and a copy of the original invoice. Returns are subject to a 20% restocking fee and will only be accepted if the Goods and packaging are received in an unused and original condition. Return of incorrectly supplied goods at the Seller's expense will be by the carrier of the Seller's choice. The Seller will not accept freight charges for goods returned by other means.

To the extent permissible by law, Goods specially purchased, manufactured, machined or cut to size to the Customer's specifications are not returnable.

14. Insurance

It is the Customer's responsibility to effect whatever insurance cover he requires at his own expense.

15. Indemnity

The Customer shall fully indemnify and keep indemnified Seller in respect of any and all losses, damages, awards, claims, costs (including legal costs on a full indemnity basis and administration costs), expenses, proceedings, actions and any other losses and/or liabilities howsoever incurred to the extent that they result from a breach by the Customer of its obligations under any contract (including these Terms and Conditions) or of its duty of care or from an act or acts of negligence or wilful misconduct on the part of the Customer.

16. Outstanding Interference

The Supplier shall not be liable to the Customer for any defect, loss, damage or delay whatsoever caused by strikes, lockouts, damage to or breakdowns of plant, Government Interference, earthquake, civil commotion, Force Majeure or any cause beyond the control of the Supplier.

17. Sellers Warranty

- (a) The words ‘goods’ in the following statement refer to the Goods and ‘You’ means the Customer:
- (b) The goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.
- (c) The Seller warrants to repair or at its option, make a replacement available to the Customer for any new item supplied by the Customer if there is any material manufacturing defect in materials or workmanship.
- (d) The Seller will only recognize a claim under this warranty if the Customer gives due notice to the Seller in writing within 12 months after supply by the Seller of that item. The Seller's contact details are as stated on the front of these Terms and Conditions. The notice must state the warranty under which the Customer is claiming and what has happened that put the Seller

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in breach of the warranty. All warranty claims must be supported by a proof of purchase.

- (e) The Customer is responsible for all costs associated with the Customer making a claim under this warranty including any freight charges.
- (f) The Customers rights under this express warranty are limited to repair or the provision of a replacement and that is the Customers' sole remedy.
- (g) Any costs incurred by the Customer in substituting the defective product (including investigation and location of the defective product and costs of any kind incurred in caring out the substitution), are to be borne by the Customer.
- (h) The benefits given to Customer by the warranty set out in clause 17 are in addition to other rights and remedies of Customer under a law in relation to good or services to which the warranty relates.

18 Limitation of Liability

(a) The Seller's liability in respect of a breach of a consumer guarantee for any service or Goods not of a kind ordinarily acquired for personal, domestic or household use is limited to, to the extent permissible by law and at the Seller's option;

- (i) in relation to the Goods:
 - (A) the replacement of the products or the supply of equivalent products;
 - (B) the repair of the products;
 - (C) the payment of the cost of replacing the products or of acquiring equivalent products; or
 - (D) the payment of the cost of having the products repaired.
- (ii) in relation to the services:
 - (A) the supply of the services again; or
 - (B) the payment of the cost of having the services supplied again.
- (b) To the extent permitted by law, all other warranties whether implied or otherwise, not set out in these Terms and Conditions are excluded and the Seller is not liable in contract, tort (including, without limitation, negligence or breach of statutory duty) or otherwise to compensate the Customer for:
 - (i) any increased costs or expenses;
 - (ii) any loss of profit, revenue, business, contracts or anticipated savings;
 - (iii) any loss or expense resulting from a claim by a third party; or
 - (iv) any special, indirect or consequential loss or damage of any nature whatsoever caused by the Seller's failure to complete or delay in completing the order to deliver the Goods.

Consequential Damage in these Terms and Conditions includes loss of use, lost production, lost income or profits, loss of opportunity, lost savings, increased or wasted expenses, delay or lost time, loss of or damage to goodwill, increased operating costs, wasted or increased financing costs, loss of or damage to data or records, loss of or unavailability of or damage to tangible or intangible property, claims made against the Customer by others, losses or costs or expenses associated with identification,

investigation, assessment, repair, replacement or servicing and any other economic loss or damage and any other special, indirect or consequential loss or damage.

19. Variation by Customer

Should there be any variation in details, sizes and quantity, delivery instruction or any other item or matter on which the quotation or invoice is based, Seller reserves the right to revise and amend the contract price accordingly.

20. Unexpected delay

This clause applies if something happens which is beyond the Sellers reasonable control that makes it impossible, more difficult or more expensive for the Seller to perform its obligations in its usual way. In those cases the Seller may wait until it is again possible for it to perform its obligations in the Sellers usual way without additional difficulty or expense and the Seller is not liable for any delay which results. Without limiting those general words, that applies where the Seller has problems due to accidents, strikes, transport difficulties, default or delay by any supplier to the Seller or stock shortages.

21. No other representations

The Seller relies on the following warranties from the Customer as essential conditions.

Where the consumer guarantees do not apply to a sale of Goods between the Customer and the Seller and to the extent permissible by law, the Customer acknowledges that;

- (a) it has not relied on any representation made or implied by the Seller or arising out of or implied by its conduct, nor upon any description, illustration or specification contained in any document produced by the Seller, including any catalogue or publicity material, unless made in writing for the purposes of this transaction and signed by one of the Sellers directors.
- (b) to the extent that the Seller may have made or implied, or by conduct given rise to or implied, any representation that is not expressly stated in these conditions, the Customer is not proceeding in reliance on the representation because the Customer has had and taken the opportunity to independently check and form its own view about the significance, and the accuracy or otherwise, of the representation.
- (c) without limitation, it is not relying on being able to make any claim against the Seller, for any representation made or conduct occurring before, under or in connection with any order, beyond the claims that can be made, and the limits applying, as provided in these Terms and Conditions.

22. Manufacturer

The Seller will use its reasonable endeavours to obtain for the Customer the benefit of any warranty from the manufacturer of any goods that the Seller supplies to the Customer. This provision does not require the Seller to commence legal proceedings or incur legal costs.

23. Personal Information and privacy arrangements

The Seller may collect personal information in connection with its dealings with the Customer. The Seller may send the Customer information unless the Customer notifies the Seller that it does not want to be on a distribution list. The Customer acknowledges and consents to the Seller collecting, disclosing and using personal information in the manner and for the purposes of enabling the Seller to better provide and market its facilities, products and services to the Customer, and to otherwise fulfil its legal obligations.

24. Clerical Errors

Clerical errors in computation, typing or otherwise of price list, catalogue, quotation, acceptance, offer, invoice, delivery docket, credit note or specification of Seller shall be subject to correction. The Seller may complete any blanks on any relevant document, on the Customer's behalf.

25. Modifications

All modifications and amendments to these Terms and Conditions shall be in writing and if otherwise shall not be binding upon the Seller. If any of the provisions of the Contract are unlawful or invalid by reason of any applicable statute or rule of Law, then such provision shall be severed from the rest of this Contract which shall remain valid and binding on the parties.

26. Government Laws

The law governing these Terms and Conditions shall be the law of NSW and the Customer submits to the non-exclusive jurisdiction of the Courts operating in NSW.