

Terms & Conditions of Trade

1 Interpretation

1.1 In these terms and conditions:

- a. 'CCA' means the Competition and Consumer Act 2010 (Cth) and any amendment thereof;
- b. 'GST Act' means the A New Tax System (Goods and Services Tax) Act 1999 (Commonwealth);
- c. 'Agreement' means the agreement between the Company and the Purchaser to provide Goods to the Purchaser subject to these Terms and Conditions of Trade ('Terms') as defined in clause 4.1 below.
- d. 'Consumer Guarantee' means the guarantees provided for in Part 3-2 Division 1 of the Australian Consumer Law or any amendment thereof;
- e. 'Company' means ASSA ABLOY Australia Pty. Ltd (ABN 90 086 451 907) whether trading in its own name or not;
- f. 'Credit Agreement' means the credit application, guarantee and terms and conditions of credit of the Company as amended from time to time applicable to the Purchaser upon being granted credit by the Company;
- g. 'Goods' means the products supplied by the Company to the Purchaser;
- h. 'GST' means the Goods and Services Tax as defined in the Act;
- i. 'Major Failure' has the same meaning as defined in the Australian Consumer Law;
- j. 'Normal Working Hours' means Monday to Friday from 08:00 to 17:00 excluding public holidays;
- k. 'Purchaser' means the purchaser of the Goods;
- l. 'Quotation' means any quotation document given by the Company to the Purchaser;
- m. 'Rates Schedule' means the schedule and / or terms of rates and charges provided to the Purchaser from the Company from time to time, whether included in a Trade Agreement or otherwise, which rates and charges may be subject to change without notice;
- n. 'Trade Agreement' means any separate Trade Agreement agreed between the Company and the Purchaser in respect of any additional terms or conditions as amended in writing from time to time.

2 Terms

- 2.1 These terms are subject to alteration without notice.
- 2.2 This Agreement commences on the date the Purchaser accepts the Quotation in writing.

3 Price

- 3.1 The price of all Goods supplied by the Company will be set at the current rate as determined by the Company at the time of delivery pursuant to the then current Rates Schedule, unless the Company and the Purchaser enter into separate Trade Agreement and clause 4.1b. applies.
- 3.2 All prices unless otherwise specified are exclusive of GST and any GST payable must be paid by the Purchaser to the Company in the same manner and at the same time as the consideration for the supply is required to be paid by the Purchaser under these Terms.
- 3.3 Prices are subject to change at any time without notice, however the Company will endeavour to provide sixty (60) days notice where possible.

- 3.4 The Purchaser will provide to the Company its Australian Business Number (ABN) and any other information required by the Company or by law prior to placing any order with the Company.

4 Precedence

- 4.1 These Terms, the Quotation, the Rates Schedule, the Credit Application, the Credit Terms, the Trade Agreement and any other written instruction or authority provided by the Company to proceed constitutes the entire agreement ('Agreement') between the Purchaser and the Company to the maximum extent permitted by law, and:
 - a. subject to clause 4.1 (b) and 4.1(c), this Agreement supersedes all prior or contemporaneous oral or written communications, proposals, terms and representations to the maximum extent permitted by law and prevails over any conflicting or additional terms of any quote, order, acknowledgment, or similar communication between the parties during the term of the Agreement;
 - b. anything contained in any Trade Agreement between the Company and the Purchaser which is inconsistent with these Terms shall prevail to the extent of any such inconsistency; and
 - c. no modification to the Agreement will be binding, unless in writing and signed by a duly authorised representative of each party.

5 Quotations and Orders.

- 5.1 Any Quotation will remain valid for a period of thirty (30) days from the date on which it was made.
- 5.2 A minimum value of \$110 (including GST) applies to each order placed by the Purchaser. Any orders placed below this value will incur a minimum order surcharge of \$25 (including GST).
- 5.3 Prices in the Quotation:-
 - a. Are subject to the Company's Rates Schedule current at the date of the Quotation unless otherwise varied in writing;
 - b. are based on rates of labour, cost of materials, services and currency exchange rates current at the date of the Quotation;
 - c. are based on rates of customs duty, freight exchange and sales tax current at the date of the Quotation; and
 - d. the Purchaser acknowledges and agrees that the prices or estimates in the Quotation may vary after the date of the Quotation and that it will pay for all additional incidental or ancillary charges, rates and disbursements as reasonably required by the Company or any third party. The Company will promptly notify the Purchaser of any such variation in writing.
- 5.4 Any Order for customised Goods or Goods which must be specially sourced by the Company for the Purchaser (not regular stock) cannot be cancelled once the production or sourcing of these Goods has commenced.
- 5.5 The Company's internal records stating the details of any order shall be prima facie evidence that the order so stated is the order placed by the Purchaser.
- 5.6 The Company may in its discretion refuse to supply any Order for any reason whatsoever.
- 5.7 The Company is under no obligation to supply any Goods until such time as it communicates to the Purchaser the Company's acceptance of the Purchaser's order.
- 5.8 The Purchaser acknowledges that once an order has been placed, the Company is under no obligation to accept any variation to that Order requested by the Purchaser. If the

Company does accept a variation to an order, the Purchaser acknowledges and agrees that the Company may vary the delivery date for the Goods and the price as a result of that variation.

5.9 Each order placed by the Purchaser shall be a representation to the Company that the Purchaser is solvent and able to pay the Company's accounts as and when they are due.

6 Credit Information

6.1 The Purchaser irrevocably authorises the Company, its servants and agents to make such enquiries as it deems necessary to investigate the credit worthiness of the Purchaser from time to time including the making of enquiries with persons nominated as trade references, the bankers of the Purchaser, any other credit provider or a credit reporting agency (hereinafter called 'the Information Sources'). The Purchaser authorises the Information Sources to disclose to the Company such information concerning the Purchaser which is within their possession and which is required by the Company to the fullest extent permitted by the relevant privacy laws of the territory.

6.2 The Purchaser agrees that the information provided on any credit application signed by the Purchaser concerning the Purchaser may be disclosed by the Company to a credit reporting agency or any other interested person to the fullest extent permitted by the relevant privacy laws of the territory.

7 Terms of Payment

7.1 All payments will be made by direct debit, electronic funds transfer, cash, company cheque or bank cheque.

7.2 Unless otherwise provided by the Company in writing, all invoices are due and payable by the last business day of the calendar month following the month in which the invoice to which the Goods relate is issued subject only to any Trade Agreement entered into by the Purchaser and the Company.

7.3 Any agreement by the Company to extend the terms of credit or other indulgence granted to the Purchaser shall not affect the Purchaser's liability to account to the Company as aforesaid.

7.4 If the Purchaser defaults in making payment in accordance with these Terms, the Company may in its absolute discretion and without notice:

- a. charge the Purchaser compound interest calculated on that portion of the Purchaser's account overdue at 2 percent above the penalty rate fixed under the *Penalty Interest Rates Act 1983* (Victoria), Australia, from time to time, calculated and payable daily from the due date until the date on which the invoice is paid in full; and
- b. require the Purchaser to reimburse the Company for all collection costs including (but not limited to) legal costs incurred by the Company, calculated on a solicitor and client basis, as a consequence of the Company instructing its solicitor to provide advice to it in connection with the default and/or to institute such recovery process as the Company in its absolute discretion decides and any other costs, expenses, losses or damages arising out of a breach of the Agreement.

7.5 The Purchaser agrees at the request of the Company to procure its directors to sign a guarantee and indemnity of the Purchaser's obligations to pay any amount due and payable to the Company, if and when required.

7.6 Any Credit Application approved by the Company for the Purchaser related to trading between the Company and the Purchaser is granted by the Company on the basis of it

reliance on information supplied by and representations made on behalf of the Purchaser and, in particular, on the information disclosed by the Purchaser in relation to the ownership of the Purchaser as set out in the Credit Application.

7.7 If the Purchaser is a company or trustee it shall inform the Company of any changes to the ownership of the Purchaser whether total or partial by forwarding a notice in writing of that change to the Company immediately upon becoming aware of same.

7.8 Until such notice as required in clause 7.7 is received by the Company the Purchaser, and if the Purchaser is a trustee each of the trustees, shall hold the Company indemnified against all losses, unpaid accounts, interest, damages, costs, charges, fees and expenses of whatsoever nature incurred or suffered by the Company in trading with any person, company or other entity (including a trust) which may have purchased the Purchaser's business or any interest therein or any of the shares in the Purchaser and used the Purchaser's previously approved credit account for trading.

7.9 The Purchaser authorises the Company to lodge a caveat over any real property owned or partly owned by the Purchaser in respect of, and to secure any monies that are owed by the Purchaser to the Company.

7.10 Any credit facility granted by the Company to the Purchaser shall continue until terminated by the Company at its sole discretion. Termination by the Company of any credit facility shall be either verbal or in writing.

7.11 Any failure by the Company to exercise any of its rights pursuant to this Agreement shall not constitute a waiver of any of its rights in respect of any other or subsequent breach by the Purchaser.

8 Rates and Charges

The Purchaser agrees to be bound by the Company's prescribed rates and charges as set out in the Rates Schedule from time to time or as otherwise agreed between the Purchaser and the Company in writing.

9 Publicity & Intellectual Property

9.1 The Purchaser acknowledges that any intellectual property in the Goods is owned by the Company.

9.2 The Purchaser agrees not to disclose to others any proprietary or confidential information acquired hereunder including the terms of the Agreement except as authorised in writing by the Company or as required by law.

10 Delivery and Cancellation

10.1 The Company accepts no responsibility for delivery of the Goods but may, in its sole discretion, elect to arrange delivery of the Goods and charge the Purchaser a delivery fee.

10.2 The Company will make all reasonable efforts to deliver the Goods by the agreed delivery date but will not be liable in any way should delivery not be made on this date.

10.3 A certificate or delivery docket signed by an authorised Company representative confirming delivery of Goods shall be conclusive evidence of delivery.

10.4 Subject to clause 5.3, an order or Quotation shall only be cancelled or varied with the written agreement of both parties.

10.5 Any agreement to cancel or vary a Quotation or an order pursuant to clause 10.4 shall be subject to the Company being compensated for any costs incurred with respect to the order prior to the cancellation or variation.

11 Withholding Supply

The Company reserves the right, irrespective of whether or not any Quotation has been accepted, to withhold supply of Goods to the Purchaser where the Company has determined, in its absolute discretion, that credit should no longer be extended to the Purchaser and the Company will not be liable for any loss or damage resulting directly or indirectly from such action.

12 Purchaser Liability and Default

12.1 If the Purchaser:

- a. fails to make any payment due under the Agreement or commit any other breach of any of the Purchaser's obligations under the Agreement; or
- b. suffers any execution;
- c. commits an act of bankruptcy;
- d. makes any composition or arrangement with creditors;
- e. stops payment or ceases or threatens to cease to carry on its business or pay its debts as and when they fall due;
- f. being a company, pass a resolution for winding up except for the purposes of a solvent reconstruction or have a receiver appointed over any of its property, or an administrator appointed, or have a winding up petition presented against it; or
- g. breaches this Agreement; then
the Company may at its option treat the Agreement as terminated and any amounts owing to the Company then unpaid whether or not due under the terms of this Agreement (including any amount arising from any outstanding but unfilled orders as at the date of termination) shall forthwith become due and payable and such termination shall be without prejudice to any claim or rights the Company may possess.

13 Return Policy for Goods

13.1 Subject to the Purchaser's statutory rights under the CCA:

- a. Any Goods supplied in accordance with the Purchaser's custom requirements or specially sourced by the Company for the Purchaser will not be acceptable for return and/or credit;
- b. Where the Purchaser makes a claim for a credit or refund in respect of Goods, the Goods must be in their original undamaged packaging, other than where the Purchaser is making a claim in respect of the Goods under the CCA;
- c. No Goods will be accepted for return and credit after two (2) months from the date of invoice unless the return or a claim is made under the CCA, in which case the Goods must be returned within a reasonable time;
- d. If the Company in its sole discretion agrees to accept the return of any Goods, they must be in an 'as new' and saleable condition free of any damage.;
- e. Upon the receipt of the returned Goods, the Company will credit to the Purchaser the Purchase Price for the Goods, less any restocking fee charged by the Company from time to time ('Restocking Fee') or other monies owing by the Purchaser to the Company; and
- f. The Purchaser will be responsible for the cost of and for effecting the delivery to the Company of any Goods returned under this Clause 13. The Company will be responsible for the cost of, and for effecting, the delivery to the Purchaser of any Goods replaced under this Clause.

13.2 Nothing in this clause affects any statutory obligations of the Company in relation to the Goods (or corresponding rights of the Purchaser), that may not lawfully be excluded.

14 Dispute Resolution

- 14.1 If a dispute arises in any way out of this Agreement, or its breach, termination or validity or the Goods the subject of this Agreement, the parties agree to endeavour to settle the dispute by mediation before having recourse to litigation, other than for disputes involving the payment for Goods by the Purchaser.
- 14.2 Any costs incurred in relation to the mediation of a dispute are to be shared equally between the Company and the Purchaser.
- 14.3 Nothing in this Agreement prevents either party from seeking urgent interlocutory intervention.

15 Force Majeure

The Company will not be liable in damages or otherwise for any failure to provide the Goods which is caused, whether wholly or partially, by an event beyond its reasonable control including (but not limited to) Act of God, force majeure, war, fire, explosion, acts of terrorism, rioting, burglary, theft, civil disturbances, restrictions by governments (local, municipal, State or Federal) or other competent authority, general economic trends, strikes, industrial action or lockouts (whether at the Company's premises or not), accidents either at the Company's premises or when in transit to or from those premises, failure by subcontractors and the late arrival of inventory or other material.

16 Personal Properties Securities Act

- 16.1 PPS Act means the Personal Properties Securities Act 2009 (Cth).
- 16.2 The Company and the Purchaser acknowledges that following the commencement of the PPS Act, the following provisions apply to this Agreement.
- 16.3 The Purchaser agrees that the Company has a security interest (for the purposes of the PPS Act) created under these Terms and Conditions in each item of Goods supplied to the Purchaser, and agrees to treat that security as a continuing and subsisting interest in the relevant Goods with priority over any registered or unregistered general (or other) security and any unsecured creditor, even if the Goods become fixtures before paid in full and that security interest secures all monies owing to the Company under this Agreement or otherwise.
- 16.4 The Purchaser grants to the Company a purchase money security interest (PMSI) and agrees that the PMSI granted hereby will continue to apply to any Goods coming into existence or proceeds of sale of Goods coming into existence.
- 16.5 The Purchaser agrees that the PMSI has attached to all Goods now or in the future supplied by the Company to the Purchaser.
- 16.6 The Purchaser acknowledges that the Company has the right to register a financing statement in respect of the relevant Goods and agrees to sign any further documents and provide any further information, such information to be complete, accurate and current in all respects, that the Company reasonably requires to register a financing statement and its security interests, with the priority the Company requires, and to maintain those registrations.
- 16.7 The Parties agree that neither will disclose to 'Interested persons' (as defined in section 275(9) of the PPS Act) or any other person, any information of the kind described in section 275(1) of the PPS Act.
- 16.8 The Purchaser waives its right to receive any notice under the PPS Act (including a notice of a verification statement) unless the notice is required by the PPS Act and that requirement cannot be excluded.

16.9 The Purchaser agrees, until title in the Goods passes to it, to keep and maintain all Goods free of any charge, lien or security interest except as created under these Terms and Conditions, and not otherwise to deal with Goods in a way that will, or may, prejudice the rights of the Company under these Terms and Conditions or the PPS Act.

16.10 The Purchaser irrevocably grants to the Company the right to enter any premises or property of the Purchaser without notice, and without being in any way liable to the Purchaser or any other person, if the Company has cause to exercise any of its rights under the PPS Act, and the Purchaser agrees to indemnify the Company against any such liability.

17 Reservation of Title and Risk

17.1 Title to the Goods will not pass from the Company to the Purchaser until the Company receives payment in full for all Goods and for all money owing by the Purchaser to the Company on any account whatsoever.

17.2 Notwithstanding clause 17.1, risk in the Goods shall pass to the Purchaser upon the sooner of happening of the delivery to the delivery destination or upon the loading of the Goods on an third party vehicle or the Purchaser's vehicle for delivery to the delivery destination.

17.3 Until title to the Goods passes to the Purchaser in accordance with clause 17.1 the Purchaser holds the Goods as bailee and fiduciary agent of the Company and will be responsible for any loss, destruction or conversion of the Goods.

17.4 The Purchaser must keep the goods insured and in a safe and marketable condition and the Purchaser must store the Goods separately in a manner that clearly identifies them as the property of the Company until such time as the Goods are paid for in full and the Purchaser agrees that the Company and/or its employees, agents or representatives may enter onto its premises to inspect or recover the Goods or inspect the Purchaser's books or records regarding the Goods at any time.

17.5 The Purchaser may, notwithstanding the provision of Clause 17.3 and 17.4, resell the Goods onto any third party in the ordinary course of business provided that the proceeds of such sale will be kept separate from other funds and are immediately applied in payment to the Company, however, the Purchaser may not bind or place any obligation on the Company whatsoever in any agreement for the sale of those Goods; and

17.6 to the extent that any of the Goods are mixed with, or form a component of any other goods ('Mixed Goods'), the Purchaser will hold on trust for the Company the portion of any proceeds which it receives from the sale of any of those Mixed Goods that relate to the respective Goods and will keep those amounts in a separate bank account and immediately apply same in payment to the Company.

18 Exclusions and Limitations

18.1 The Company excludes all statutory or implied conditions and warranties to the maximum extent permitted by law.

18.2 Subject to Clauses 17.3 and 17.5, the maximum liability of the Company for any and all breaches of this Agreement will be capped at the amount of the Outstanding Amounts previously paid by the Purchaser to the Company under this Agreement.

18.3 If any law, implies in this Agreement any term, condition, warranty or Consumer Guarantee and that law avoids or prohibits provisions in an agreement excluding or modifying the application of or exercise of, or liability under, that term, condition or warranty, that term, condition, warranty or Consumer Guarantee shall be deemed to be included in this

Agreement provided that the liability of the Company for a breach of the applicable term, condition or warranty (other than where such limitation is excluded by law) is limited to, at the option of the Company. If the breach relates to Goods:

(i) the replacement of the goods or the supply of equivalent goods, the repair of the goods;

(ii) the payment of the cost of replacing the goods or of acquiring equivalent goods; or

(iii) the payment of the cost of having the goods repaired unless there is a Major Failure with respect to the goods, in which case the Purchaser will be entitled to a remedy under the CCA.

18.4 The Purchaser acknowledges that the Purchaser does not rely, and that it is unreasonable for the Purchaser to rely, on the skill and judgment of the Company as to whether the Goods supplied are reasonably fit for any purpose for which they are being acquired, and that the sale is not a sale of goods by description or sample.

18.5 To the maximum extent permitted by law, the Company excludes its liability (including, but not limited to, liability in tort, contract and for breach of statute) to the Purchaser or any other person for:

a. any loss or damage consequential or otherwise (whether contractual, tortious, statutory or otherwise) for any special, incidental, indirect or consequential damages or injury including, but not limited to, any loss of profits, contracts, or revenue arising out of or in connection with the provision of the Goods and whether as a result of any breach, default, negligence or otherwise by the Company suffered or incurred by the Purchaser or any other person in relation to the Goods; and

b. in particular, but without limiting clause 18.5a., any loss or damage consequential or otherwise suffered or incurred by the Purchaser or any other person caused by or resulting directly from any failure, defect or deficiency of any kind of or in the Goods.

19 Claims

19.1 Any claims by the Purchaser in relation to the Goods other than for returns, which must be made in accordance with clause 13 or warranty claims which must be made in accordance with the Company's warranty policy, must be made within thirty (30) days of delivery of the Goods.

19.2 Any other claims for adjustment to any invoice for any reason whatsoever must be made in writing within thirty (30) days of said invoice.

19.3 Nothing in this clause affects any statutory obligations of the Company (and corresponding rights of the Purchaser), which may not lawfully be excluded.

20 Privacy and Financial Information

20.1 The Purchaser acknowledges and consents to the use by the Company and its employees, officers and agents for the purpose of supply of Goods to the Purchaser hereunder and for the purposes of assessing and approving any credit application of the Purchaser of the Purchaser's and any guarantor's personal information in respect of but not limited to any application for credit, credit history, and in respect of obtaining reports in relation to same or for general marketing purposes and otherwise in accordance with the Company's privacy policy from time to time, which is available upon request. Other than in the circumstances allowed under the relevant privacy laws of the territory or its privacy policy, the

Company will not disclose such personal information to other parties. The Purchaser may contact the Company's Privacy Officer at any time to access or change any personal information provided to the Company.

- 20.2 The Purchaser irrevocably authorises the Company to seek and use any reports from a credit reporting agency of its choosing containing personal information about the Purchaser in relation to the collection of any monies owing by the Purchaser to the extent permitted by law. The Purchaser consents to the Company giving any information relating to the collection of any outstanding amounts to any credit-reporting agency to the extent permitted by law.
- 20.3 The Purchaser will provide any and all necessary instructions and/or authorities required by the Company's accountants, debtor insurers and bankers to enable the Company to make investigations from time to time into the Purchaser's trading and financial position.
- 20.4 The Purchaser's details, including its purchases will be added to the Company's database and will be used by the Company:
- a. To identify the Purchaser;
 - b. To provide services to the Purchaser, including the processing of any application for or granting of credit and the management and administration of those services;
 - c. To provide the Purchaser with information about the Goods;
 - d. In undertaking risk assessment management; and
 - e. In gathering data and disclosing data to third parties such as:
 - (i) insurance brokers and insurers;
 - (ii) credit reporting agencies; and
 - (iii) financial institutions.
- 20.5 A copy of the Company's privacy policy can be viewed at www.assaabloy.com.

21 Jurisdiction

All contracts between the Company and the Purchaser shall be subject to the laws of the State of Victoria and the Purchaser agrees to submit to the non-exclusive jurisdiction of the Courts of Victoria and the Federal Court of Australia.

22 Severance

If any provision of this Agreement does not comply with any law, then the provision must be read down so as to give it as much effect as possible. If it is not possible to give the provision any effect at all, then it must be treated as severable from the rest of this Agreement.

23 Variation

Any variation to this Agreement must be in writing and signed by both parties.

24 Web Access

A copy of these Terms and Conditions and Privacy Policy can be viewed at www.assaabloy.com.au