

## TERMS AND CONDITIONS OF TRADE

### 1. DEFINITIONS

- 1.1 "FSA" means Fabric Solutions Australia Pty Ltd ACN 164 175 393.
- 1.2 "Customer" means the entity that has contracted with FSA to purchase Goods and/or Services.
- 1.3 "Goods" means any goods supplied by FSA to the Customer including but not limited to liquid containment products, architectural fabrications and fabric products.
- 1.4 "Price" means the cost of the Goods and/ or Services as agreed between FSA and the Customer and includes all out of pocket expenses FSA incurs on the Customer's behalf subject to clause 5 of this contract.
- 1.5 "Services" means any services provided by FSA to the Customer including but not limited to the installation of liquid containment products, architectural fabrication and fabric products.

### 2. ACCEPTANCE

- 2.1 Any instructions received by FSA from the Customer for the supply of Goods and/or Services shall constitute a binding contract and acceptance of the terms and conditions contained herein.

### 3. PRECEDENCE

- 3.1 The Customer acknowledges that these terms and conditions take precedence over any terms and conditions contained in any document provided by the Customer.

### 4. PRIVACY ACT 1988 (Cth) (AS AMENDED)

- 4.1 FSA collects personal information about the Customer (if a sole trader, individual trustee, or partnership of individuals) for the purposes set out in its Privacy Policy and its Credit Reporting Policy. Both of these policies may be located at <http://www.fabricsolutions.com.au>. A hardcopy of these policies can also be provided to the Customer free of charge, upon request.
  - 4.1.1 The Privacy Policy sets out: the personal information FSA collects; how FSA collects and uses this information; how the Customer may access or correct it; and how the Customer may make a complaint in respect of FSA's management of the information;
  - 4.1.2 The Credit Reporting Policy sets out: the types of credit related personal information FSA collects; how it is collected, why it is collected; how FSA may use and disclose the credit related personal information, including the credit reporting bodies to which FSA is likely to disclose the Customer's credit related personal information to; and how a complaint may be made in respect of FSA's management of the credit related personal information.
- 4.2 By the Customer providing instructions to FSA for the supply of Goods and/or Services, the Customer is consenting to FSA collecting, handling, using, disclosing and otherwise dealing with the Customer's personal information (including credit related personal information) in accordance with the terms of FSA's Privacy Policy, its Credit Reporting Policy and in accordance with Australia's privacy laws.

### 5. PRICE

- 5.1 The Price shall, at FSA's sole discretion, be:
  - 5.1.1 as stated on any invoice provided by FSA to the Customer; or
  - 5.1.2 FSA's quoted price (subject to clause 7).

### 6. PAYMENT

- 6.1 All accounts must be paid in full within thirty (30) days from the date in which FSA invoices the Goods and/or Services to the Customer.
- 6.2 Payment for any amount outstanding shall be deemed immediately due and payable in any of the following circumstances:
  - 6.2.1 there is non-payment of any sum by the due date;
  - 6.2.2 FSA forms the view that the Customer will not pay any sum by its due date;
  - 6.2.3 the Customer is bankrupted or enters administration, liquidation or receivership;
  - 6.2.4 a Court judgment is entered against the Customer and remains unsatisfied for seven (7) days;
  - 6.2.5 any material adverse change in the financial position of the Customer.
- 6.3 Interest accrues on any amount owing after the due date at the rate of 1% per month, calculated daily from the first day overdue until payment.

- 6.4 All payments to be made by the Customer will be made without set-off (whether arising at law or in equity) or counterclaim (whether arising at law or in equity) and free and clear of any withholding or deduction whatsoever, unless prohibited by law.
- 6.5 The Customer shall pay (on a full indemnity basis) any and all expenses, disbursements, collection costs and legal costs which FSA has incurred or is liable to pay, in connection with the enforcement of any rights and/or preservation of any rights contained in this contract.
- 6.6 For the purposes of clause 6.5, the Customer acknowledges that collection costs may be calculated on a commission basis at a percentage rate of up to 20% of the amount due and expressly agrees to pay for those expenses as liquidated damages on demand, irrespective of whether (a) FSA is not liable to pay the collection agent the commission, until the Customer has made payment of the Customer's overdue debt (or any portion thereof) and/or (b) the amount of work actually performed by the collection agent before the Customer makes a payment for an overdue debt.
- 6.7 Receipt of a cheque, bill of exchange, or other negotiable instrument shall not constitute payment until it results in FSA receiving cleared funds for the entire amount of the negotiable instrument.
- 6.8 Without prejudice to any other remedies FSA may have, if at any time the Customer is in breach of any obligation (including those relating to payment), FSA may suspend or terminate the supply of Goods and/or Services and any of its other obligations to the Customer. FSA will not be liable to the Customer for any loss or damages the Customer suffers because FSA exercised its rights under this clause.
- 6.9 A certificate signed by the Credit Manager of FSA or authorised person, stating the amount due and owing by the Customer at the date specified on the certificate shall be evidence that the amount stated is the sum due and owing to FSA at the time.

### 7. QUOTATION

- 7.1 Where a quotation is given by FSA for Goods and/or Services:
  - 7.1.1 it will constitute an offer by FSA to supply Goods and/or Services to the Customer pursuant to these terms and conditions.
  - 7.1.2 unless otherwise agreed, the quotation shall be valid for 30 days from date of issue;
  - 7.1.3 FSA will not be bound by any order given unless accepted in writing;
  - 7.1.4 FSA reserves the right to alter the quotation because of circumstances beyond its control including and, in no way limited to, increases in the price charged by its suppliers for products and/or services.
- 7.2 Where Goods and/or Services are required in addition to the quotation, the Customer agrees to pay for the additional cost of such Goods and/or Services.

### 8. GOODS AND SERVICES

- 8.1 Goods and/or Services shall be described on the invoices or quotation or any other forms provided by FSA to the Customer.
- 8.2 Any description of Goods provided by FSA is given by way of identification only and use of any such description shall not constitute this sale as a sale by description.
- 8.3 If the Customer or the quotation specifications require that any Goods are supplied by a third party supplier, then the estimated delivery date for the Goods is subject to the availability of the product from that supplier and FSA reserves the right to require the Customer to pay a deposit of up to 100% of FSA's cost of purchase and delivery of such Goods.
- 8.4 If the Customer and/or its agents or representatives wish to inspect the Goods prior to delivery, the inspection shall be at the Customer's expense. The absence of any objection in respect of the Goods immediately after inspection shall be deemed acceptance of the Goods.

### 9. RETURNED GOODS

- 9.1 FSA is not under any duty to accept goods returned by the Customer and will do so only on terms to be agreed in writing in each individual case.
- 9.2 If FSA agrees to accept returned Goods from the Customer under clause 9.1, the Customer must return the Goods to FSA at FSA's place of business referred to in the attached quotation.

**10. DRAWINGS**

- 10.1 All specifications, drawings and particulars of weights and dimensions submitted by FSA are approximate only and any deviation from any of these things does not vitiate any contract with FSA or form grounds for any claim against FSA.  
The descriptions, illustrations and performances contained in catalogues, price lists and other advertising matter do not form part of the contract for the Goods or of the description applied to the Goods.
- 10.2 Where specifications, drawings or other particulars are supplied by the Customer, FSA's price is made on estimates of quantities required. If there are any adjustments in quantities above or below the quantities estimated by the Seller and set out in the quotation, then such increase or decrease is to be adjusted on a unit rate basis according to unit prices set out in the attached quotation.
- 10.3 Designs prepared by FSA for the Customer together with dimensions, weights, test and working pressures and illustrations published by the FSA:
- 10.3.1 shall be the exclusive property of FSA who shall at all times retain the copyright thereto;
- 10.3.2 shall not be passed by the Customer to a third party without explicit written consent of FSA; and
- 10.3.3 are only for the guidance of the FSA and shall not form part of any subsequent contract between FSA and the Customer.

**11. RISK TO GOODS AND DELIVERY**

- 11.1 Risk in any Goods shall pass to the Customer at the time when the Goods have been delivered to the Customer.
- 11.2 Unless FSA agrees in writing to the contrary, FSA will arrange delivery of the Goods to the Customer to the point of delivery.
- 11.3 Any date quoted for delivery by FSA is an estimate only.
- 11.4 Delivery charges to the point of delivery shall be at the Customer's expense and charged in accordance with FSA's rate.
- 11.5 The Customer authorises FSA to leave the Goods at the point of delivery whether or not a person is present to accept delivery.
- 11.6 FSA shall not be obliged to obtain a signed receipt or other acknowledgement at the point of delivery. However, if a signed receipt or other acknowledgement of delivery is obtained from a person at the point of delivery who appears to be authorised by the Customer to sign or otherwise take delivery, then to the extent permitted by law, the signed receipt or acknowledgement shall be conclusive evidence of delivery, the quantity of Goods received, the lack of defects in the Goods and compliance with any orders.
- 11.7 FSA shall not be liable for:
- 11.7.1 late delivery or non-delivery of Goods;
- 11.7.2 any loss, damage or delay suffered by the Customer arising from the late or non-delivery of Goods; and
- 11.7.3 any loss or damage to Goods in transit.
- 11.8 FSA reserves the right to make deliveries to the Customer by instalments. If delivery is made by instalments the Customer is not entitled to:
- 11.8.1 terminate or cancel the order following its acceptance by FSA;
- 11.8.2 terminate these terms and conditions;
- 11.8.3 any claim, loss or damage howsoever arising from the failure of FSA to deliver any instalments on or before the date quoted for delivery.
- 11.9 If FSA elects to deliver part of an order, or service then every part delivery or Service will be a separate contract between FSA and the Customer, on these terms and conditions.
- 11.10 FSA will assist the Customer as necessary in pressing claims against carriers in relation to loss or damage to Goods in transit where the Customer has:
- 11.10.1 notified FSA and the carriers in writing immediately after loss or damage is discovered on receipt of the Goods; and
- 11.10.2 lodges a claim for compensation on the carrier within three (3) days from the date of receipt of the Goods.

**12. STORAGE**

- 12.1 FSA may make a reasonable charge for storage if delivery instructions are not provided by the Customer within fourteen (14) days of a request by FSA for such instructions.
- 12.2 The Customer agrees that FSA may charge for storage from the first day after FSA requests the Customer to provide delivery instructions.

**13. TITLE AND PERSONAL PROPERTY SECURITIES ACT 2009 (PPSA)****Goods**

- 13.1 Whilst risk in the Goods passes on delivery, legal and beneficial title in the Goods shall remain with FSA until it has received payment in full for all monies owed by the Customer.
- 13.2 Until FSA has received payment in full for all monies owed by the Customer, FSA reserves the following rights:
- 13.2.1 legal and beneficial ownership of the Goods;
- 13.2.2 the right to enter the Customer's premises and retake possession of the Goods;
- 13.2.3 the right to keep or resell any Goods repossessed under sub-clause 13.2.2; and
- 13.2.4 any other rights it may have at law or under the PPSA.
- 13.3 Where, pursuant to sub-clause 13.2.3:
- 13.3.1 FSA resells the Goods repossessed, it is agreed that FSA may credit the Customer's account with the net proceeds of sale (after deduction of all repossession, storage, selling and other costs); or
- 13.3.2 FSA retains possession of the repossessed Goods, it is agreed that FSA may credit the Customer's account with the invoice value less such sum as FSA reasonably determines on account of wear and tear, depreciation, obsolescence, loss of profit and costs.
- 13.4 FSA shall not be liable for any costs, damages, expenses or losses incurred by the Customer or any third party as a result of any action taken to repossess the Goods.
- 13.5 The Customer shall store the Goods separately from other items and in a manner which clearly identifies the Goods as FSA's property.
- 13.6 The Customer shall not dispose of, or part with possession of the Goods without prior written consent of FSA.
- 13.7 Pending further transfer of title, the Customer may use the Goods as agent of FSA and as authorised by FSA to manufacture new products.
- 13.8 The Customer is authorised to sell the Goods and/or any other manufactured products as agent of FSA under the following conditions:
- 13.8.1 the Customer must keep separate records in relation to the proceeds of the sale of any Goods which have not been paid for, bank the proceeds of any such sale into a separate account and immediately remit such funds to the credit of FSA.
- 13.8.2 if any Goods are used in a manufacturing process or mixed with other materials, the Customer shall record the value of Goods so consumed in relation to each unit of finished product and upon sale of any unit of finished product, immediately remit that amount from the proceeds of the sale to the FSA; and
- 13.8.3 the authorisation shall lapse immediately upon any of the following events occurring:
- 13.8.3.1 the Customer being a natural person, commits an act of bankruptcy or is declared insolvent;
- 13.8.3.2 where the Customer is a corporation, proceedings are commenced to wind up the Customer or the Customer is placed under official management or a receiver is appointed over the Customer's undertaking or property or any part thereof or the Customer is placed under any form of insolvent administration;
- 13.8.3.3 the Customer enters into an arrangement or assignment for the benefit of its creditors;
- 13.8.3.4 the Customer disposes of, or parts with possession of the Goods otherwise than as expressly authorized by this contract; and/or
- 13.8.3.5 the Customer, in the opinion of the FSA, is in breach of any terms of this contract.
- 13.9 If the Goods are attached, fixed, or incorporated into any property of the Customer, title in the Goods shall remain with FSA until the Customer has made payment for all monies owed to FSA and where those Goods are mixed with other property so as to be part of or a constituent of any new product, title to these products shall be deemed to be assigned to FSA as security for the full satisfaction by the Customer of the full amount owing between FSA and the Customer.

13.10 Until FSA receives payment for Goods in full, the Customer acknowledges that FSA has a Purchase Money Security Interest ("PMSI") which attaches over the Goods and their proceeds and a Security Interest in relation to other amounts owed by the Customer to FSA.

**General**

13.11 Upon assenting to these Terms and Conditions of Trade, the Customer acknowledges and agrees that these Terms and Conditions of Trade constitute a Security Agreement for the purposes of the PPSA.

13.12 The Customer undertakes to do anything (such as obtaining consents, producing documents, producing receipts and getting documents completed and signed) which FSA asks and considers reasonably necessary for the purposes of:

13.12.1 ensuring that a PMSI and/or Security Interest is enforceable, perfected and effective;

13.12.2 enabling FSA to apply for any registration, or give any notification, in connection with the Security Interest created under this Agreement so that the PMSI and/or Security Interest has the priority required by FSA.

13.13 To the extent permitted by law, the Customer irrevocably waives its right to:

13.13.1 receive notices or statements under sections 95, 121(4), 125, 130, 132(3)(d), 132(4) and 135 of the PPSA;

13.13.2 redeem the Goods under section 142 of the PPSA;

13.13.3 reinstate the Agreement under section 143 of the PPSA;

13.13.4 receive a Verification Statement.

13.14 Nothing in clause 13 prevents FSA from taking collection or legal action against the Customer to recover any monies owed from time to time.

**14. TERMS OF CREDIT**

14.1 The Customer acknowledges that it has no right to credit or a credit facility from FSA and the granting of any credit or credit facility by FSA in respect to the supply of the Goods and/or Services will be at FSA's absolute discretion.

14.2 The Customer acknowledges that the credit facility and account number provided to the Customer are personal to the Customer and shall not be assigned, transferred or made available by it for use by any corporation, person or organisation, and further acknowledges that any Goods ordered/purchased or Services provided by the use of the credit facility or account number shall be paid for by the Customer.

**15. LIABILITY**

15.1 All implied conditions, warranties and undertakings other are expressly excluded to the extent permitted by law.

15.2 Where the Goods are of a kind other than Goods ordinarily acquired for personal, domestic or household use, then FSA's liability is limited, at its option, to anyone or more of the following:

15.2.1 the replacement or supply of the equivalent of the Goods;

15.2.2 the repair of the Goods;

15.2.3 the payment of the costs of replacing the Goods or acquiring their equivalent; or

15.2.4 the payment of the costs of having the Goods repaired.

15.3 Where the Services are of a kind other than Services ordinarily provided for personal, domestic or household use, then FSA's liability is limited, at its option, to any one or more of the following:

15.3.1 the provision of the equivalent Services;

15.3.2 the provision of the Services;

15.3.3 the payment of the costs of providing the Services or providing their equivalent; or

15.3.4 the payment of the costs of having the Services provided.

15.4 Subject to the Customer's rights under Schedule 2 of the *Competition and Consumer Act 2010* ("CCA"), FSA shall not be liable for:

15.4.1 any loss or damage of any kind whatsoever, arising from the Goods, including consequential loss whether suffered or incurred by the Customer or another person and whether in contract or tort (including negligence) or otherwise and irrespective of whether such loss or damage arises directly or indirectly from the Goods; and

15.4.2 the Customer shall indemnify FSA against all claims and loss of any kind whatsoever however caused or arising and without limiting the generality of the foregoing of this clause whether caused or arising as

a result of the negligence of FSA or otherwise, brought by any person in connection with any matter, act, omission, or error by FSA, its agents or employees in connection with the Goods.

**16. WARRANTY**

16.1 Manufacturer's warranty applies to the Goods where applicable.

16.2 To the maximum extent permitted by law, FSA makes no warranty in respect of the Services.

16.3 Unless otherwise stated in writing in the quotation attached hereto, FSA gives no warranty as to the suitability for any purpose of the Goods and the Customer acknowledges that it has purchased the Goods after making its own enquiries as to their suitability for the purpose of the Customer.

16.4 Any comments made by FSA regarding project constructions are for information only and are not to be taken as recommendations.

**17. CANCELLATION**

17.1 Orders placed with FSA cannot be cancelled without the written approval of FSA. In the event that FSA accepts the cancellation of any order placed, it shall be entitled to charge a reasonable fee for any work done to the date of the cancellation including a fee for the processing and acceptance of the Customer's order and request for cancellation.

**18. CHARGE**

18.1 The Customer hereby charges in favour of FSA all of the Customer's estate and interest in any land, freehold or leasehold, in which the Customer now has or which it may later acquire any such interest in, with payment of all monies owing by the Customer to FSA from time to time and hereby consents to FSA lodging a caveat or caveats which note FSA's interest.

**19. JURISDICTION**

19.1 These terms and conditions and all matters concerning the business relationship between FSA and the Customer shall be governed by the law of the State of Queensland and the parties submit to the non-exclusive jurisdiction of the Courts of Queensland for the conduct of any litigation.

**20. ASSIGNMENT**

20.1 The Customer cannot assign these terms and conditions without the prior written consent of FSA.

20.2 FSA can assign these terms and conditions to a third party without the consent of the Customer.

**21. MISCELLANEOUS**

21.1 Any property of the Customer in possession, custody or control of FSA is completely at the Customer's risk and FSA shall not be liable for any loss or damage to or by the property.

21.2 If by reason of any fact, circumstance, matter or thing beyond the reasonable control of FSA, FSA is unable to perform in whole or in part any obligation under these terms and conditions, including delay in delivery, FSA shall be relieved of that obligation under these terms and conditions to the extent and for that period that it is so unable to perform and shall not be liable to the Customer in respect of such inability.

21.3 FSA may perform any of its obligations through subcontractors.

21.4 Failure by FSA to enforce any of the terms and conditions contained in this contract shall not be deemed to be a waiver of any of its rights or obligations under this contract.

21.5 If any provision of this contract shall be invalid, void or illegal or unenforceable, the validity, existence, legality and enforceability of the remaining provisions shall not be affected.

21.6 Any variation of the terms and conditions contained in this contract or any contract must be agreed to in writing by FSA for it to have any legal effect.

21.7 The Customer will notify FSA in writing of any change of ownership of the Customer or its business, or of directorships in the case of a corporate Customer, or of any other change whatsoever affecting these terms and conditions within seven (7) days from the date of such a change.