

**1. General**

These Conditions of Sale ("Conditions") apply to the sale of items and equipment (hereinafter referred to as Goods) included in the current issues of the Fortress Systems Pty Ltd (hereinafter referred to as the Seller) price lists or, where a quotation is made, they shall form part of that quotation. The conditions are subject to the prevailing laws in the state of Victoria, Australia.

Where the Seller is required to provide installation, maintenance or other services ("Services") in relation to the Goods hereby sold, then the standard terms and conditions of Installation of Goods and Maintenance of Goods shall apply, being respectively clauses 23 and 24 hereof and forming part of these Conditions.

**2. Precedence**

In the event of conflict between the Conditions and those which may be included in, or implied by, any document forming part of any enquiry, specification, quotation, order or contract, then the Conditions prevail unless they are expressly varied by the Seller in writing or by law.

**3. Variation of Conditions**

No variation of the Conditions shall be binding unless agreed in writing between the authorised representative of the buyer and the Seller. Any advice or recommendation given by the Seller or its employees or agents to the buyer or its employees or agents as to storage application or use of the Goods which is not confirmed in writing by the Seller is followed or acted upon entirely at the buyer's own risk, and accordingly the Seller shall not be liable for any such advice or recommendation which is not so confirmed.

**4. Specifications**

(a) The buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the buyer, and for giving the Seller any necessary information relating to the Goods or Services within a sufficient time to enable the Seller to perform its obligations under the Conditions.

(b) The Seller reserves the right to make any changes in the specification of the Goods or Services which are required to conform with any applicable safety or other statutory requirements or, where the Goods or Services are to be supplied to the Seller's specification, which do not materially affect their quality or performance. The Seller warrants that the goods pass all health and safety requirements when sold.

**5. Prices**

(a) The price of Goods and any related Services shall be the Seller's quoted price and shall be as stated in the quotation or order of the buyer. Unless otherwise stated in the Seller's quotation all prices quoted are valid for 30 days from the date of that quotation only or until earlier acceptance by the buyer.

(b) GST at 10% shall be added to the price, except in the case of export orders which will not be subject to GST.

(c) A freight charge per order, charged at the rate applicable at time of delivery, will be applied on all orders which are delivered to a buyer's premises. This amount will be shown as a separate item on all invoices. The freight charge will not be applied to the supply of equipment back orders from an original order, which is beyond the control of a buyer.

(d) Unless stated otherwise in the quotation, the price quoted includes packing in accordance with the Seller's standard practice. Any other packing requested by the buyer or deemed necessary by the Seller will be charged for in addition to the price quoted.

**6. Return of products**

Standard products as listed in the published price lists of the Seller may be returned for credit only with the written approval of the seller provided the Goods:

(a) are returned within 7 days of delivery, at the buyer's expense to the Seller's warehouse;

(b) are accompanied by a delivery docket stating the Seller's original invoice number and a reason for return; are returned in an unsoiled, undamaged and resaleable condition, in their original packing.

Items identified in customer specific pricelists do not constitute standard products.

**7. Intellectual Property**

All intellectual property rights including copyright, patent and design rights for all engineering design, software and hardware supplied by the Seller remain the property of the Seller and shall not be available in any form to third parties, nor re-used by the buyer, unless agreed to in writing by the Seller.

**8. Terms of payment**

(a) Subject to any special terms agreed in writing between the buyer and the Seller, the Seller shall be entitled to invoice the buyer for the price of the Goods or Services on or at any time after delivery of the Goods or provision of the Services or after the Seller has notified the buyer that the Goods are ready for collection.

(b) The buyer shall pay the price of the Goods or Services within 30 days of the date of the Seller's invoice.

(c) If the buyer is wound up or becomes bankrupt or has a receiver appointed (who is not removed within (7) seven days or any application is made or proceedings are issued to effect any of the foregoing all money not then due and owing by the buyer to the Seller shall become immediately due and owing.

(d) The buyer shall not be entitled to withhold or offset payment of any amount due on account of any claim against the Seller whether admitted or disputed.

**9. Delivery**

(a) Delivery of the Goods shall be made by the buyer collecting the Goods at the Seller's premises at any time after the Seller has notified the buyer that the Goods are ready for collection or, if some other place for delivery is agreed by the Seller, by the Seller delivering the Goods to that place or, if the Seller and the buyer have agreed that the Seller will arrange for installation of the Goods at a premises nominated by the buyer ("the Premises"), upon the installation of the Goods at the Premises.

(b) Any dates quoted for delivery of the Goods are approximate only and the Seller shall not be liable for any delay in delivery of the Goods however caused. Time for delivery shall not be of the essence unless previously agreed by the Seller in writing.

(c) If the buyer fails to take delivery of the Goods or fails to give the Seller adequate delivery instructions the Seller may store the Goods until actual delivery and charge the buyer for the reasonable costs (including insurance) of storage.

(d) Unless otherwise agreed in writing between the buyer and the Seller the Goods shall be delivered ex works and the Seller shall be under no obligation to give notice under section 39 (3) of the Goods Act 1958 (Vic).

**10. Risk of Loss**

(a) Risk of damage to or loss of the Goods shall pass to the buyer in the case of Goods to be delivered at the Seller's premises at the time when the Seller notifies the buyer that the Goods are available for collection, or in the case of Goods to be delivered otherwise than at the Seller's premises, at the time of delivery, or in the case of Goods to be installed, upon the completion of installation of the Goods at the Premises, or if the buyer wrongfully fails to take delivery of the Goods, the time when the Seller notifies the buyer that the Goods are available for collection.

(b) Notwithstanding delivery and the passing of risk in the Goods the property in the Goods shall not pass to the buyer until the Seller has received in cash or cleared payment in full of the price of the Goods and all other Goods and Services agreed to be sold or provided by the Seller to the buyer for which payment is then due.

**11. Reservation of Title**

For so long as the Seller has all the right, title, and interest in and to the Goods the following provisions shall apply:

(a) If payment for the Goods or Services is overdue in whole or in part, the Seller may without notice and prejudice to any of its rights:

- i. sell any of the Goods to any other person;

- ii. recover any of the Goods and may enter upon the buyer's premises by its servants or agents for the purpose.
- (b) The buyer shall store all Goods which have not been paid for in full separately from any other Goods and in a way that clearly manifests the Seller's ownership.
- (c) The buyer acknowledges that it holds the Goods as bailee of the Seller and that a fiduciary relationship exists between them.
- (d) Until full payment for the Goods and Services are received by the Seller, the buyer shall not without the prior consent of the Seller, sell, assign, transfer, declare a trust in respect of or otherwise dispose of or charge mortgage or otherwise encumber any of the Goods. If with the consent of the Seller any of the Goods are on-sold by the buyer, the buyer in its position as fiduciary shall:
  - i. assign to the Seller the benefit of any claim against the buyer of the Goods;
  - ii. hold the proceeds of sale separately from its other money and purchaser; and
  - iii. account fully to the Seller for the proceeds of the sale until the buyer's indebtedness in respect of the Goods is fully satisfied.
- (e) In addition to any lien to which the Seller may by statute or by the Conditions or otherwise be entitled, the Seller shall in the event of the buyer's failure to comply with the Conditions, be entitled to a general lien in respect of any or all property or Goods belonging to the buyer which is in the Seller's possession.
- (f) The Seller shall have no obligation to provide Services to the buyer so long as any amount due and payable by the buyer remains unpaid.

## 12. Seller's Warranty

- (a) Subject to the conditions set out below the Seller warrants that the Goods will correspond with their specification at the time of delivery and will be free from defects in material and workmanship for a period of 24 months from delivery. The warranty referred to herein shall be the only warranty given by the Seller and all implied conditions or warranties whether statutory or otherwise that can be lawfully excluded are hereby "excluded".
- (b) The above warranty is given by the Seller subject to the following conditions:
  - i. the Seller shall be under no liability in respect of any defect in the Goods arising from any drawing, design or specification supplied by the buyer;
  - ii. the Seller shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Seller's instructions (whether oral or in writing), misuse or alteration or repair of the Goods without the Seller's approval.
- (c) The above warranty does not extend to parts, materials or equipment not manufactured by the Seller, in respect of which the buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Seller.
- (d) If the buyer wishes to make a claim with respect to any Goods or Services it must do so within (10) ten days of the date of delivery of the Goods or performance of the Services and such claim shall not be greater in amount than the price for the Goods or Services in respect of which damages are claimed. Where a valid claim in respect of the Goods or Services or part thereof is accepted by the Seller, the Seller shall at its sole discretion either replace the Goods or the relevant part thereof or re-perform the Services at no cost to the buyer or refund to the buyer the price for the Goods or Services (or a proportionate part thereof) and it is agreed that upon such replacement or refund the Seller shall not thereafter be liable in any way to the buyer with respect to that claim. Warranty shall be on a return to the seller's works basis.
- (e) Except in respect of death or personal injury caused by the Seller's negligence, the Seller shall not be liable to the buyer by reason of any representation, or any implied warranty condition or other term, or any duty at common law, or under the express terms for any consequential loss or damage (whether for loss of profit or otherwise), costs expenses or other claims for consequential compensation whatsoever (and whether caused by the negligence of the Seller, its employees or agents or otherwise, which arise out of or in connection with the supply for the Goods or their use or resale by the buyer, except as expressly provided in the Conditions.

## 13. Limitation of Liability

- (a) The buyer agrees to limit any claims to the cost of replacement of the Goods or supply of equivalent Goods or re-performance of the Services.
- (b) The Seller shall not be liable in any way for:
  - i. any claim, loss or expense arising which is made after 14 days from the date of the delivery of Goods (or at all once Goods have been unpacked, on sold or otherwise used or applied) or after performance of the Services - after which there shall be deemed to have been unqualified acceptance;
  - ii. any contingent, consequential, direct or indirect, special or punitive damages arising in any way and whether due to the Seller's negligence or otherwise, including any loss suffered by a third party whilst using the Goods sold to the buyer by the Seller or whilst the Seller is performing the Services;
  - iii. any incidental damage to the Premises sustained during the installation or maintenance of the Goods.
- (c) No other term, condition, agreement, warranty, representation or understanding whatsoever express or implied, in any way extending to, otherwise relating to or binding upon the Seller other than the Conditions.
- (d) All recommendations provided by a director, employee or contractor of the Seller is provided in good faith. Any buyer acting on the advice of the Seller does so at the buyer's own risk and indemnifies the Seller against any damage or loss resulting from acting upon such advice.

## 14. Indemnity

The buyer indemnifies the Seller against any claim or loss arising from or related in any way to any dealing between the buyer and the Seller or anything arising therefrom or arising as a result of any breach of the Conditions.

## 15. Cancellation of Order

Orders placed for Goods or Services which are to be specially manufactured, specially imported, or specially indented by the Seller shall not be cancelled without prior approval in writing from the Seller. The Seller shall be entitled to charge a cancellation fee which shall reflect all costs incurred or payable as a result of such cancellation.

## 16. Rules

The buyer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for the payment of any duties thereon.

## 17. Enforcement and Waiver

- (a) The Seller is a member of the group of companies whose holding company is Post Glover Asia LLC and accordingly the Seller may perform any of its obligations or exercise any of its rights hereunder by itself or through any other members of its group, provided that any act or omission of any such other member shall be deemed to be the act or omission of the Seller.
- (b) An election by the Seller not to exercise any of its rights arising as a result of any breach of the Conditions shall not constitute a waiver of any rights of the Seller relating to any subsequent or other breaches.
- (c) The Conditions shall be governed by the laws of Victoria, Australia, and the parties irrevocably submit to the jurisdiction of that state and any Court of Appeal therefrom.

## 18. Directors' Guarantee

If the buyer is a company, its directors guarantee all payments due to the Seller arising out of provision of the Goods by the Seller to the buyer.

## 19. Notices

All notices that may be given pursuant to the Conditions shall be deemed to have been received:

- (a) if posted by prepaid post two (2) days after the date of posting;
- (b) if delivered by hand, on the date of delivery; and
- (c) if sent by facsimile or electronic transmission, on receipt by the sender of the activity (confirmation) report as to the successful transmission.

**20. Force Majeure**

If delivery is prevented or delayed, in part or all, by reason of Act of God, or the consequence thereof including, but not limited to fire, flood, typhoon, earthquakes, or by reason of riots, wars, hostilities, government restrictions, trade embargoes, strikes, act of terrorism, lockouts, labour disputes, boycotting of Goods, ship shortage, manufacturer's bankruptcy, delays or damage in transportation or other causes beyond the Seller's control, the Seller may, at its option, perform its obligations under the Conditions or the unfulfilled portion thereof within a reasonable time from the removal of the cause preventing or delaying performance, or rescind unconditionally and without liability the Conditions or the unfulfilled portion thereof.

**21. Bankruptcy / Insolvency**

- (a) If the buyer commits or is involved in any act of insolvency, the buyer shall be deemed to be in default under the Conditions.
- (b) An act of insolvency is deemed to include bankruptcy, liquidation, receivership, administration, or the like.

**22. Severability**

Any part of the Conditions being the whole or part of any clause(s) shall be capable of severance without affecting any other part of the Conditions.

**23. Installation of Goods**

- (a) The Seller and buyer may agree as part of or in addition to the sale of Goods, that the Seller will arrange to have the Goods installed at the Premises ("Installation Agreement").
- (b) The installation Services may be performed by the Seller, or any of its employees, servants, agents, or contractors as nominated at the absolute discretion of the Seller for the purposes of the performance of those Services.
- (c) The cost of installing the Goods may be included in the Seller's quoted Price for the Goods or may be quoted separately.
- (d) In the event of the cost of installation to the Seller increasing between the date of the Installation Agreement and the actual date of installation, the Seller may be entitled to charge the buyer the amount of the increase. The increases in costs of installation shall be calculated by reference to increases in transport costs, actual installation costs, actual assembly costs and costs arranging for the Goods to be operative.
- (e) The quoted cost of installation has been calculated by reference to the normal site conditions for installation and on the assumption that the structure, walls, doors, electrical wiring and other connections fixed or fitted have been properly and correctly designed for and are suitable without alteration, modification or addition for the installation of the Goods.
- (f) The Seller shall notify the buyer of a date for installation and it shall be the buyer's responsibility to ensure that the Premises is suitable for the installation and is available to the Seller or any of its employees, servants, agents, or contractors and that the walls, the building, doors and all electrical wiring and other connections have been correctly prepared and are capable of having the Goods installed, affixed, or fitted in by that date.
- (g) If for any reason, including lack of access to or unsuitability of the Premises, the Seller is unable to install the Goods on the nominated date of installation, the Seller shall not be liable to the buyer in any way whatsoever for any loss which the buyer or any other person claiming through the buyer may suffer as a result of the Seller's inability to install on the date for installation. The Seller shall as soon as possible notify the buyer of any delay or deferment of installation.
- (h) Except where the Seller has agreed to carry out modifications to the Goods before installation, the Seller shall not be obliged to carry out any modifications to the Goods in any way whatsoever. However, if modifications are requested by the buyer after the date of purchase or the Installation Agreement then the Seller and buyer may agree for the said modifications to be carried out PROVIDED THAT the Seller shall be entitled to charge an additional fee for carrying out such modifications as may be agreed between the Seller and the buyer.
- (i) In the event of there being any defect in materials or workmanship relating to the Goods as installed or the installation itself, the buyer shall notify the defect and confirm such notice in writing to the Seller during the quoted warranty period and in the event of the Seller servicing the Goods when in the opinion of the Seller the cause of such service is not any defect in materials or workmanship then the buyer shall pay the cost of the Seller providing such service. If at any time, it is necessary or desirable that the Goods so installed be disconnected or disassembled and/or transported back to the Seller, then all costs of disconnection, reinstallation, transport and freight shall be borne by the buyer.

**24. Maintenance of Goods**

- (a) The Seller and buyer may agree as part of or in addition to the sale and/or installation of Goods, that the Seller will arrange to have the Goods maintained at the Premises as may be reasonably required from time to time ("Maintenance Agreement").
- (b) The maintenance Services may be performed by the Seller, or any of its employees, servants, agents, or contractors as nominated at the absolute discretion of the Seller for the purposes of the performance of those Services.
- (c) Any maintenance Services provided by the Seller to the buyer following installation, will be carried out at the expense of the buyer at a cost to be determined by the Seller.
- (d) In the event of the cost of maintenance to the Seller increasing, the Seller may be entitled to charge the buyer the amount of the increase.
- (e) If for any reason, including lack of access to or unsuitability of the Premises, the Seller is unable to provide the maintenance Services on the nominated date for performance of those Services, the Seller shall not be liable to the buyer in any way whatsoever for any loss which the buyer or any other person claiming through the buyer may suffer as a result of the Seller's inability to provide maintenance Services on that date.
- (f) In the event of there being any defect in materials or workmanship relating to the maintenance of the Goods, the buyer shall notify the defect and confirm such notice in writing to the Seller during the quoted warranty period.

**25. Buyer's Responsibilities**

- (a) The buyer must, at its own cost and expense, provide the Seller and any of its employees, servants, agents or contractors with reasonable, safe and legal access to the Premises for the purposes of carrying out installation or maintenance Services.
- (b) The buyer must maintain the Premises in such a way as to ensure a safe environment for the Seller and any of its employees, servants, agents or contractors to attend the Premises and carry out any agreed installation and maintenance Services.

**26. Disclaimers on Warranty**

The following will not be covered by the Warranty:

- (a) Defects to the Goods caused by misuse, mishandling, neglect, or adjustments made other than by the Seller or its employees, servants, agents or contractors;
- (b) Damage to the Goods caused by accident, non-adherence to operating and maintenance instructions or improper electrical connections;
- (c) Failure resulting from use of the Goods under arduous or unreasonable climatic or operating conditions;
- (d) Unauthorised personnel having access to or having serviced or modified or otherwise tampered with the Goods;
- (e) Where failure of the Goods is caused by consumables or connecting equipment not complying with the Seller's or manufacturer's recommendation or acceptable industry standards;
- (f) Where the Goods have had identification marks and numbers altered or removed;
- (g) Failure resulting from installation errors or incorrect installation procedure where installation has been carried out by persons other than the Seller or its employees, servants, agents or contractors;
- (h) Normal maintenance and service adjustments as part of equipment operating instructions;
- (i) Damage to the Goods caused by ordinary wear and tear.