

**Corporate Protection Australia Systems**  
**CONDITIONS OF SALE**

**1. Definitions**

All contracts entered into by Corporate Protection Australia Pty Ltd are subject to these Conditions of Sale ("Conditions").

In these Conditions unless the context otherwise requires:

**"Buyer"** means the purchaser of the Goods pursuant to the contract of which these Conditions form part;

**"Company"** means Corporate Protection Australia Pty Ltd;

**"Contract Price"** wherever it appears in these Conditions means the agreed price plus GST;

**"Goods"** means the goods, items, materials and services (or any one or combination of these) to be supplied pursuant to the contract between the Buyer and the Company of which these Conditions form part.

**2. General**

- 2.1 Any quotation is not an offer, and no contract shall come into existence unless and until the Company has accepted in writing the Buyer's signed official purchase order to supply the Goods specified in any quotation.
- 2.2 Any quotation provided by the Company is valid for a period of thirty (30) days from the quotation date after which it may be subject to review.
- 2.3 If anything in the express terms of the quotation are inconsistent with these Conditions the express terms of the quotation shall prevail.
- 2.4 Notwithstanding anything contained in any Buyer's conditions of contract relating to any contract between themselves and the Company, the Company's Conditions shall apply and take precedence over all other conditions.
- 2.5 Any typographical, clerical or other error or mission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Company shall be subject to correction without any liability on the part of the Company. Illustrations, weights, measures, performance capabilities, application suitability information and other data set out in sales literature of the Company are statements of opinion and are provided for information only and form no part of the contract between the Buyer and the Company.
- 2.6 These Conditions contain the whole of the terms upon which the Goods are supplied (subject only to any express special term or variations given in the Company's written quotation or in the Company's acceptance of the Buyer's signed official purchase order) and constitutes the entire agreement between the parties. These Conditions shall supersede all previous and other communications and representations either oral or in writing.

**3. Prices**

- 3.1 The Company reserves the right, by giving notice to the Buyer at any time, to increase the Contract Price of the Goods to reflect any increase in cost to the Company which is due to any factor beyond the control of the Company (for example, but without limitation, any new or additional duties, increase in labour, any foreign exchange fluctuation, increase in materials or other costs of manufacture, any change in delivery dates, quantity or specifications of the Goods which are requested by the Buyer, unpredicted site or union requirements, any delay caused by any instructions of the Buyer or failure by the Buyer to give the Company adequate information or instructions, or additional costs incurred in excavating unforeseen rock or other underground obstructions which are detected during the course of the contract).
- 3.2 If any money payable under the Contract is not made when due, such money will bear interest from the date for payment to the date of payment, both inclusive, at the rate of 5% per annum simple interest which interest shall be paid contemporaneously with the outstanding money.
- 3.3 In no circumstances will the Buyer be entitled to withhold payment (or part thereof) of the Contract Price or to raise any deduction, set off or counterclaim in respect thereof relating to the contract.
- 3.4 All pricing does not include GST. GST will be charged at the rate current at the time the Goods are supplied.

#### **4. Payment**

- 4.1 Where the total Contract Price is less than \$20,000 (excluding GST), payment is due strictly 30 days from the invoice date.
- 4.2 Where the Contract Price exceeds \$20,000 (excluding GST) the first invoice for 20% of the Contract Price will be issued upon acceptance by the Company of the Buyer's signed official purchase order. Payment of this invoice is due strictly 14 days from the invoice date.
- 4.3 The balance of 80% will be invoiced upon completion of the contractual scope of works and payment will be due strictly 14 days from the invoice date. However if for any reason the contractual scope of works are delayed due to any factor beyond the control of the Company, the Company reserves the right to issue an invoice for the value of work performed.

#### **5. Acceptance of Goods**

- 5.1 Acceptance of the Goods delivered shall be deemed for all purposes to have taken place at the expiration of forty-eight (48) hours from the date of delivery, unless otherwise notified to the Company in writing within forty-eight (48) hours from the date of delivery.

#### **6. Title**

- 6.1 Notwithstanding delivery of the Goods, no title in the Goods whether legal or equitable shall pass to the Buyer until the full amount of the Contract Price of the Goods has been paid.
- 6.2 Where any payment is made by cheque, the payment shall not have been made until the cheque has been honoured upon presentation.
- 6.3 Pending payment as provided for in this clause, the Buyer agrees to hold the goods as bailee of the Company and shall re-deliver the goods to the Company in the event that the Buyer makes default in making any of the payments required under the contract.
- 6.4 In the event that (notwithstanding the provisions if this clause) title in the Goods has passed to a third party, then the proceeds of sale of the Goods to the third party shall be the property of the Company to the extent of the outstanding Contract Price.

#### **7. Risk**

- 7.1 Where delivery is included in the Contract Price, the Goods shall be at the Buyer's risk from the time the Goods are delivered to the place of delivery of the Goods.
- 7.2 When delivery of the Goods is arranged by the Buyer, the Goods shall be at the Buyer's risk from the time the Goods are loaded at the Company's collection point, notwithstanding that title and/or property in the Goods may not have passed to the Buyer. It shall be the Buyer's obligation to effect full insurance upon the Goods from such time as the Goods are at the Buyer's risk. The Company shall not be responsible for loss of, damage to, or destruction of Goods during transit or otherwise whilst the Goods are at the Buyer's risk.

#### **8. Delivery**

- 8.1 The place for delivery of the Goods shall be to the location nominated by the Buyer in the Buyer's official purchase order.
- 8.2 It shall be the Buyer's responsibility to be at the place and at the time arranged for delivery, and to make available a suitable area at which to off-load the Goods. In the event that the Buyer or the Buyer's agent is not in attendance at the site and at the time arranged for delivery, or in the event that there is no suitable area to off-load the Goods, the Company reserves the right to:
- (a) Off-load the Goods at the nearest point suitable to off-load the Goods, in which such case the Company shall not be responsible for any loss of or damage to the Goods arising thereafter; or
  - (b) Store the Goods at an alternative site (at the Company's discretion) in which such case the Buyer shall pay responsible to pay for attempted delivery and all additional costs associated with the additional storage and further delivery charges.

## 9. Time for Delivery

- 9.1 The Company does not warrant delivery of the Goods by any date and shall not be liable in damages or otherwise by reason of any delay in delivery of whatsoever nature and for whatever reason.
- 9.2 If it has been expressly agreed by the Company that delivery of the Goods shall be made by a particular date or within a particular timeframe, then subject to the provisos in this clause, the Company will use best endeavors to arrange delivery by that date or within that timeframe, provided always that the Company shall not be responsible for delays or non delivery due to an act of God, explosion, flood, tempest, fire or accident, war, labour disputes or shortages, strikes, lock-outs, site conditions, availability of materials, legislative prohibition or restrictions, or any other cause beyond the control of the Company. In the event of failure by the Company to deliver by a particular date or within a particular timeframe, the Company shall not be liable to the Buyer for any amounts payable by the Buyer by way of damages (whether liquidated or otherwise) under its contract with the Buyer or under any contract entered into by the Buyer with a third party for the purpose of which or in connection with which the Goods are supplied.
- 9.3 The Buyer agrees that any expressed time for delivery by the Company shall not be of the essence of the contract.
- 9.4 The Company will endeavour to comply with any reasonable request by the Buyer for postponement of delivery but shall be under no obligation to do so and the Buyer is obliged to take delivery as agreed under the contract. Where postponement is agreed by the Company, the Buyer shall pay all costs and expenses occasioned by the delay, including all reasonable charges for storage and any increased costs of delivery.

## 10. Warranty

- 10.1 For Goods supplied by the Company, the Buyer shall have the benefit of the manufacturer's warranty from the date of invoice.
- 10.2 Subject to clause 10.4, three (3) months warranty on labour is provided for Goods supplied by the Company commencing on the date of installation. Work performed under warranty will be carried out between 7am and 4pm Monday to Friday, excluding public holidays. Service charges will apply for all requests made outside these hours.
- 10.3 Any warranty is negated and will not apply in the following circumstances:
- (a) Acts of God, explosion, flood, tempest, fire, accident, war or terrorism;
  - (b) If the Goods are altered, tampered with, mistreated or repaired by personnel not authorized by the Company;
  - (c) If loss or damage is caused by interference by external factors (for example, power surges) or nature (for example, ants and other animals);
  - (d) Fair wear and tear;
  - (e) If the Goods are not used and maintained in accordance with the manufacturer's instructions.
- 10.4 All items, products and materials sold on a supply only basis must be returned to the Company or its authorized representative for testing and repair or replacement under warranty. It is the responsibility of the Buyer to transport the items, products or materials and all freight costs are the responsibility of the Buyer. Service and travel charges will apply for on site testing, repair and replacement of items, products and materials sold on a supply only basis.
- 10.5 Attending site or testing items, products or materials sold on a supply only basis at a location nominated by the Company for warranty claims will incur service charges where no fault is found or the cause of the fault negates the warranty. Service charges will also apply where access to a site is denied for any reason beyond the Company's control where the Company or its representative has attended site for a warranty claim.

## 11. Force Majeure

- 11.1 The Company shall not be liable to the Buyer or be deemed to be in breach of the contract between the Buyer and the Company by reason of any delay in performing, or any failure to perform, any of the Company's obligations in relation to the Goods, if the delay or failure was due to any cause beyond the Company's reasonable control, for example but without limitation:

- (a) acts of God, lightning strikes, earthquakes, floods, droughts, storms, mud slides, radioactive or chemical contamination, explosions, fires or other natural disasters, acts of war, terrorism, acts of public enemies, riots, civil commotion, malicious damage, sabotage, blockades and revolutions;
- (b) strikes, lockouts, industrial disputes or difficulties, labour disputes or difficulties, work bans, pickets or blockades.

#### **12. Sub-Contractors**

- 12.1 The Company shall be entitled to appoint one or more sub-contractors to carry out all or any of its obligations under any contract.

#### **13. Cancellation**

- 13.1 Cancellation of orders cannot be accepted without the consent in writing of the Company and on the condition that all costs and expenses incurred by the Company up to the time of cancellation, and/or all loss of profits and other loss or damage resulting to the Company by reason of such cancellation will be reimbursed by the Buyer to the Company.
- 13.2 Non stock and special manufactured items are non returnable.
- 13.3 Where the Company agrees to accept Goods for return, a minimum re-stocking charge of 25% of the agreed price of the item returned will be charged.

#### **14. Default**

- 14.1 On happening of any one or more of the following events, namely the Buyer:
  - (a) Fails to make payment to the Company on the due date; or
  - (b) Refuses or neglects to take delivery of the Goods; or
  - (c) (Being a company) has an administrator or liquidator appointed over all or any of the assets of the Buyer or enters into a scheme of arrangement for the benefit of its creditors, resolves that it be wound up or have a petition for its winding up presented against it or (being an individual) an application is made for the winding up of the Buyer or a petition for bankruptcy is presented or the Buyer petitions for his bankruptcy; or
  - (d) Ceases, or threatens to cease, to carry on business; or
  - (e) Fails to comply with any obligations herein contained, then without prejudice to any other right or remedy available to the Company, the Company shall be entitled to terminate the contract or suspend any further deliveries under the contract without any liability to the Buyer, and if the Goods have been delivered but not paid for the Contract Price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

#### **15. Confidentiality**

- 15.1 Any quotation prepared by the Company together with these Conditions and any other documentation related to the quotation is strictly confidential. The Buyer must not, and must ensure its representatives do not disclosure in any way any of this information or furnish a copy of this information to any other entity without the approval in writing of the Company.

#### **16. Limitation of Liability**

- 16.1 Any advice or recommendation given by the Company or its employees or agents to the Buyer or its employees or agents as to the storage, application or use of the Goods which is not confirmed in writing by the Company is followed or acted upon entirely at the Buyer's own risk, and accordingly the Company shall not be liable for any such advice or recommendation which is not confirmed in writing.
- 16.2 The Company accepts no liability of any kind where any Goods have been misused or damaged by any person in any manner following delivery.
- 16.3 It is the Buyer's responsibility to provide the Company with accurate details and descriptions of all underground services on site. The Company accepts no responsibility or liability for damage to services where the Buyer has not

made the details and descriptions available or where the details and descriptions provided are not accurate and as a result services are damaged and repair is required.

- 16.4 The Company shall not be liable for any direct or indirect costs, loss, damages or expenses or consequential loss relating to damage to property or injury or loss to any person, firm or company, or for any loss of profits or production due to any cause whatsoever, except to the extent the Company caused the damage, injury or loss by an act of negligence.

#### **17. Indemnity and Release**

- 17.1 The Buyer indemnifies the Company from and against any liability, claim, action, loss, damage, cost and expense the Company sustains or incurs arising out of or in any way connected with the performance of the Company's obligations under the contract with the Buyer.
- 17.2 The Buyer shall indemnify the Company against all actions, costs (including the cost of defending any legal proceedings), claims, proceedings, accounts and demands in respect of any infringement or alleged infringement of patent rights, registered design or similar protective rights resulting from compliance with the Buyer's instructions, requirements or specifications, whether express or implied.
- 17.3 The Buyer releases the Company from any action or demand due to any damage, loss, injury or death occurring in or near the site, except to the extent the Company caused this by an act of negligence.

#### **18. Waiver**

- 18.1 The failure of the Company at any time to:
- (a) Enforce or require the strict observance of or compliance with any provision of the contract of which these Conditions form part; or
  - (b) Exercise any election or discretion under the contract of which these Conditions form part, will not operate as a waiver of them or the rights of the Company, whether express or implied, arising under the contract.

#### **19. Severability**

- 19.1 If any part of these Conditions is or becomes illegal, invalid or unenforceable in any relevant jurisdiction, the legality, validity or enforceability of the remainder of the Conditions will not be affected and the Conditions will be read as if the part had been deleted in that jurisdiction only.

#### **20. Trade Practices Act 1974**

- 20.1 The provisions hereof shall not be construed in such a manner as to exclude those conditions and warranties which are implied into any contract by the *Trade Practices Act 1974*.

#### **21. Jurisdiction**

- 21.1 All contracts between the Buyer and the Company will be governed by the laws of Queensland. The parties submit to the non-exclusive jurisdiction of the courts of Queensland.

#### **22. Preventative Maintenance Contract**

- 22.1 It is recommended that the Buyer contacts the Company to arrange a preventative maintenance contract to ensure on-going reliability of the Goods.

#### **23. Variation**

- 23.1 The Company may vary these Conditions at any time by notice to the Buyer.