

W.R.B NOMINEES PTY LTD TRADING AS PARAMOUNT SAFETY PRODUCTS (ABN 68 008 801 072) OR  
PARAMOUNT SAFETY PRODUCTS (NZ) LIMITED TRADING AS PARAMOUNT SAFETY PRODUCTS (NZBN 9429047707351)

ALL CREDIT AND SALE OF GOODS BY PARAMOUNT SAFETY PRODUCTS ARE CONCLUDED BY THESE

## STANDARD TERMS AND CONDITIONS OF SALE

### DEFINITIONS

In this Agreement:

**Agreement** means this standard terms and conditions of sale and incorporates any Price List, Quote (where applicable) and invoice issued by Paramount Safety.

**Australian Consumer Law** means Schedule 2 of the *Competition and Consumer Act 2010* (Cth).

**Confidential Information** means all information learnt, obtained or accessed by a Party, or that is disclosed (whether orally, in writing or in any other form) by one Party (**Disclosing Party**) to the other Party (**Receiving Party**), in connection with this Agreement or the Services, including all copies, notes and records and all related information based on or arising out of any such disclosure which is not:

1. in the public domain (otherwise than as a result of a breach of this Agreement);
2. independently developed or known by the Company; or
3. obtained by the Receiving Party from a third party source that is entitled to have the information.

**Order** means acceptance by the Purchaser of the Quote and the direction of the Purchaser to Paramount Safety to supply a specific quantity of the Product for the Price or, where the Purchaser does not require a Quote, any direction of the Purchaser to Paramount Safety to supply a specific quantity of the Product for the Price.

**Paramount Safety** means W.R.B. Nominees Pty Ltd (ABN 68 008 801 072) trading as Paramount Safety Products or Paramount Safety Products (NZ) Pty trading as Paramount Safety Products (NZBN 9429047707351) or any of their related bodies corporate.

**Party** means Paramount Safety or the Purchaser and **Parties** means both Paramount Safety and the Purchaser.

**Payment Date** means within Thirty (30) days of the end of month that an invoice is issued by Paramount Safety Products (ABN 68 008 801 072) to the Purchaser or on the 20th of the month following of which any invoice issued by Paramount Safety Products (NZBN 9429047707351) to the purchaser or the payment date specified on the invoice for the Product issued by Paramount Safety, whichever is the earlier.

**Quote** means any indication of pricing for any Product provided to the Purchaser by any authorised representative of Paramount Safety.

**PPSA** means the *Personal Property Security Act 2009* (Cth) and any successor legislation.

**PPSR** means the Personal Property Securities Register as specified under the PPSA.

**Product** means the product supplied by Paramount Safety to the Purchaser in response to a Quote and includes any marketing collateral related to the product.

**Price** means the price of the Product as set out in the Quote or the Price List provided by Paramount Safety and, where applicable, as varied in accordance with clause 4.1.

**Price List** means any price list issued by Paramount Safety as amended from time to time.

**Warranty Against Defects** means the warranty as defined in clause 10.1.

### 1 AGREEMENT

- 1.1 Upon acceptance of this Agreement and subject to clause 3.1, Paramount Safety agrees to supply the Product to the Purchaser.
- 1.2 In consideration of Paramount Safety's promise to supply the Product, the Purchaser agrees to pay Paramount Safety the Price.
- 1.3 The Parties agree that the terms of this Agreement shall supersede any other agreement between the Parties in respect of the Product and that in any event, this Agreement shall govern the sale of the Product from Paramount Safety to the Purchaser.
- 1.4 This Agreement incorporates the terms of any credit application agreement entered into between Paramount Safety and the Purchaser. Where there is any conflict, the terms of this Agreement shall prevail.
- 1.5 The Purchaser agrees that:
  - (a) It will only sell, resell or distribute the Product to end users of the Product through its own official website(s) (to which Paramount Safety has been notified) or physical store(s); and
  - (b) It will not sell, resell or distribute the Product to other resellers, or through any third party of marketplace websites without the prior written approval of Paramount Safety.

### 2 OFFER AND ACCEPTANCE

- 2.1 The Purchaser may accept a Quote in writing, by actions or by conduct, including but not limited to issuing a purchase order.
- 2.2 If the Purchaser instructs Paramount Safety to provide the Product, the Purchaser shall be deemed to accept the terms of this Agreement.
- 2.3 By acceptance of the Quote in accordance with clause 2.1 or by directing Paramount Safety to supply a specific quantity of the Product for the Price, the Purchaser shall be deemed to issue an Order to Paramount Safety.

### 3 DELIVERY OF THE PRODUCT

- 3.1 If Paramount Safety is unable to fulfil an Order, it shall notify the Purchaser as soon as reasonably practicable, and this Agreement shall terminate. The Parties agree that termination of this Agreement for inability of Paramount Safety to fulfil an Order shall not give rise to any right to claim any costs, charges or penalties against Paramount Safety.
- 3.2 Any variation of the Order shall only occur with written consent of Paramount Safety. Paramount Safety may, at its discretion, pass on any costs of such variation to the Purchaser.
- 3.3 The Purchaser agrees that it may only cancel an Order by providing written notice to Paramount Safety. Cancellation of an Order shall have the following consequences:
  - (a) The Purchaser shall pay for the costs of return of the Product;
  - (b) Paramount Safety shall be entitled to charge a restocking fee; and
  - (c) unless the Product in the same condition as when delivered by Paramount Safety to the Purchaser, the Purchaser shall be liable for the full Price of the Product in accordance with the Order.

### 4 PRICE

- 4.1 While Paramount Safety will use reasonable endeavours to notify the Purchaser of any change in Price, the Purchaser agrees that the Price of the Product may be changed without notice by Paramount Safety. Such changes in Price shall be limited to changes in the cost of supply of the products beyond the control of Paramount Safety including but not limited to changes in labour, materials, services and exchange rates.
- 4.2 The Price is exclusive of GST, taxes, duties and other imposts which, if chargeable, are payable by the Purchaser, whether they are enforced or brought into force before or after acceptance in accordance with clause 2.

### 5 PAYMENT

- 5.1 The Purchaser must pay the Price in full, without any deduction or right of set-off or counter claim, by the Payment Date.
- 5.2 Time is of the essence for payment of the Product.
- 5.3 If payment in full is not received by Paramount Safety by the Payment Date, then Paramount Safety shall be entitled, without prejudice to any other rights it may have, to:
  - (a) charge the Purchaser interest on the outstanding amount at the Reserve Bank of Australia cash rate plus three (3) per cent; or at the current cash investment rate plus three (3) per cent as published by the Reserve Bank of New Zealand; and
  - (b) indemnification by the Purchaser against all collection costs incurred by Paramount Safety, including but not limited to legal expenses on an indemnity basis and any debt collection costs and commissions.

### 6 DELIVERY

- 6.1 Delivery is deemed to have been made at the earlier of the following:
  - (a) when the Purchaser or its agent, representative or contractor is given possession of the Product; or
  - (b) when the Product arrives at the Purchaser's premises or nominated premises.
- 6.2 Upon delivery, the Product becomes the responsibility of the Purchaser.
- 6.3 Paramount Safety will choose the carrier and method of transportation of the Product, unless otherwise agreed to in writing by Paramount Safety.
- 6.4 Paramount Safety shall fulfil the Order in one delivery or in instalments. Failure to deliver any instalment will not entitle the Purchaser to refuse to accept delivery for any remaining instalments.

- 6.5 Where the Purchaser requests a particular method of delivery and Paramount Safety agrees to it in writing, the Purchaser will cover the cost of delivery by that method from the point of dispatch of the Product by Paramount Safety.
- 6.6 Any estimates of delivery times agreed by Paramount Safety are estimates only and not commitments. No delay in delivery will entitle the Purchaser to refuse delivery, cancel its order or to claim any costs or compensation.

## 7 TITLE

- 7.1 The Purchaser agrees that all legal and equitable title to and property in all product supplied by Paramount Safety is and remains vested in Paramount Safety until payment in full has been received by Paramount Safety in respect of the Order and all other moneys owing by the Purchaser to Paramount Safety.
- 7.2 Until the Purchaser has paid Paramount Safety in full for any product sold to the Purchaser, the Purchaser must not sell (unless such sale is in the ordinary course of the Purchaser's business), dispose of, do anything that would render any product liable to be seized or distrained and must not grant a security interest or lien over such product.
- 7.3 If any product sold to the Purchaser by Paramount Safety is sold in the ordinary course of the Purchaser's business, the Purchaser must, if the Purchaser has not already paid Paramount Safety for such product, hold the proceeds of sale of such product on trust for Paramount Safety and immediately pay such proceeds to Paramount Safety on or before the Payment Date.
- 7.4 Unless the Purchaser has sold any product sold to the Purchaser by Paramount Safety in the ordinary course of business, the Purchaser will store the relevant product purchased from Paramount Safety in such a way that it is clearly identified as the property of Paramount Safety and keep such product in good order and condition.
- 7.5 The Purchaser irrevocably agrees and undertakes that Paramount Safety (including its servants or agents) will have the right without notice or demand to immediately enter upon the Purchaser's premises or such other premises in which Paramount Safety reasonably believes any product sold by Paramount Safety to the Purchaser to be held and reclaim possession and remove such product in the possession or control of the Purchaser.
- 7.6 Where any product sold by Paramount Safety to the Purchaser has been mixed or sold, Paramount Safety's rights under this Agreement shall still apply insofar as the proceeds of the sale can be traced.

## 8 SHORTFALLS

- 8.1 Paramount Safety's liability for shortage in the quantity of the Product delivered is limited to making good such shortage.
- 8.2 The Purchaser shall not claim for any shortage in quantity unless the Purchaser gives written notification of the shortage within 48 hours of delivery as determined in accordance with clause 6.1.

## 9 DEFECTS

- 9.1 The Purchaser will have 48 hours after delivery to inspect the Product and notify Paramount Safety in writing as to any defect.
- 9.2 The Purchaser shall allow Paramount Safety the opportunity to inspect the allegedly defective Product.
- 9.3 After Paramount Safety has inspected the Product it will either deny or confirm whether the Product is defective. The Purchaser agrees that Paramount Safety's decision will be conclusive as to the state of the Product.
- 9.4 Providing that the Purchaser returns any defective Product, Paramount Safety may, at its discretion:
- issue to the Purchaser a credit for the value of the defective Product;
  - repair the Product; or
  - replace the defective Product with similar Product.
- 9.5 The liability of Paramount Safety shall be subject to clause 14 and shall not extend to any other claims for loss or damage occurring in respect to the supply of the Product.
- 9.6 Unless the Purchaser strictly complies with this clause 9, the Product shall be deemed to be supplied in accordance with this Agreement and free of any defect or damage.

## 10 REPRESENTATION AND WARRANTIES

- 10.1 In addition to any rights and remedies that the Purchaser may be entitled to under any applicable law, and notwithstanding the provisions of clause 9, Paramount Safety provides to the Purchaser a Warranty Against Defects. During a period of 12 months after the date of purchase of the Product, if the Product has one or more defects that makes it unfit for its reasonably foreseeable purpose, the Purchaser is entitled to return the Product to Paramount Safety.
- 10.2 Where the Purchaser makes a claim under the Warranty Against Defects, clause 9.4 shall apply.

- 10.3 Where the Product is subject to the Australian Consumer Law:
- the following will apply to the Product and the Purchaser: 'Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure'.

- In order to claim the Warranty Against Defects, the Purchaser must return the Products, together with proof of purchase, to one of Paramount Safety's offices as stated in our website. The Purchaser must bear the expense of claiming the Warranty Against Defects. The Purchaser can claim such expenses by forwarding the documents evidencing the expenses to Paramount Safety. If Paramount Safety finds that:
  - The Warranty Against Defects applies to the Purchaser's claim; and
  - The expenses are reasonably incurred,
 Paramount Safety will reimburse the Purchaser for such expenses. Paramount Safety's decision is final.

## 10.4 The Warranty Against Defects does not apply:

- where the defect is caused by the Purchaser; or
- where the Product has been repaired or otherwise tampered with by any person other than a person authorised by Paramount Safety to make repairs; or
- normal wear and tear.

## 11 SECURITY

- 11.1 Terms in this clause have the same meaning as given to them in the PPSA.
- 11.2 Upon entering into this Agreement, the Purchaser and the Guarantor/s acknowledges and agrees that these terms and conditions:
- constitute a security agreement for the purposes of the PPSA; and
  - create a security interest in addition to personal property already held by the Purchaser in:
    - all product (including but not limited to any collateral related to that product) that will be supplied in the future by Paramount Safety to the Purchaser;
    - the proceeds of the product and collateral sold by the Purchaser; and
    - any collateral that could be secured by a purchase money security interest under the PPSA, including but not limited to purchase money obligations.
- 11.3 Paramount Safety is entitled to register its security interest granted under these terms on the PPSA register and the Purchaser waives its rights to receive written notification of such registration by Paramount Safety.
- 11.4 The value of the security interest is the total amount due and payable by the Purchaser from time to time.
- 11.5 Until title to the product passes to the Purchaser, the Purchaser must not give Paramount Safety a written demand or allow any other person to give the Purchaser a written demand requiring Paramount Safety to register a financing change statement under the PPSA or enter into or allow any other person to enter into the PPSR and financing change statement under the PPSA.
- 11.6 The Purchaser will not enter into any security agreement that permits any other person or entity to register any security interest in respect of the product or the proceeds of the product.
- 11.7 The following shall constitute an event of default by the Purchaser:
- non-payment of any sum by the due date;
  - the Purchaser intimates that it will not pay any sum by the due date;
  - any other creditor seizes or intimates that it intends to seize the products of Paramount Safety;
  - any product in the possession or control of the Purchaser is materially damaged while any sum due from the Purchaser to Paramount Safety remains unpaid;
  - the Purchaser becomes insolvent, is put into liquidation, has a receiver appointed or enters into a scheme of arrangement in relation to the Purchaser or any of the Purchaser's assets or a landlord proceeds against the Purchaser or any of its assets;
  - a court judgment is entered against the Purchaser and remains unsatisfied for seven days or more;
  - any material adverse change in the financial position of the Purchaser, of which Paramount Safety shall be the sole judge.
- 11.8 The Purchaser agrees to pay any charges of and incidental to registration of the security interest created by this Agreement pursuant to the PPSA on the PPSR.

**11.9\_** If Paramount Safety has cause to exercise any of its rights under the PPSA, the Purchaser shall indemnify Paramount Safety in relation to any claims made against Paramount Safety by any third parties as a result of such exercise.

## **12 INTELLECTUAL PROPERTY**

**12.1** Any Intellectual Property owned or created by Paramount Safety, its employees, representatives or agents, whether under common law or statute, up until the date of the Order and during the Term of the Order shall remain the sole and exclusive property of Paramount Safety.

**12.2** The purchaser must not register, or claim ownership of any Intellectual Property owned or created by Paramount Safety, its employees, representatives or agents, under common law or statute (including but not limited to any intellectual Property in respect of the Product). Paramount Safety may grant to the Purchaser a licence to use and distribute the Intellectual Property as reasonable required to use or sell the Product only.

## **13 LIMITATION OF LIABILITY**

**13.1** The Purchaser agrees that Paramount Safety's liability to the Purchaser for any claim made in relation with an Order, whether under statute, common law (including negligence) or in equity, shall be to the extent permitted by law, limited to the value of that Order.

**13.2** Paramount Safety will not be liable for any indirect, consequential or incidental loss or damage or any other loss or damage of the same nature howsoever arising out of or in connection with this Agreement or the Order and expressly including loss of profit or revenue and loss of opportunity or savings.

## **14 TERMINATION**

**14.1** Paramount Safety may terminate this Agreement at any time without cause by giving the Purchaser a seven (7) day written notice.

**14.2** Paramount Safety may terminate this Agreement immediately if the Purchaser is in breach of any term of this Agreement, including but not limited to, clause 1.5, 7.2 or 12.2. All payment owed by the Purchaser shall be considered due and payable by the date of termination.

**14.3** Termination under this clause 14 or any other clause of this Agreement does not prejudice:

- (a) Paramount Safety's right to seek any injunctive relief or damages arising out of the act or omission of the Purchaser; and
- (b) The rights of Paramount safety accruing prior to termination.

## **15 MISCELLANEOUS**

### **15.1 Assignment**

The Purchaser may not assign any or all of its rights or obligations under the Agreement without the prior written consent of Paramount Safety.

### **15.2 Force Majeure**

Neither Party shall be liable for any failure to perform or delay in performance of this Agreement to the extent that any such failure arises from acts of God, war, riots, new or amended law or policy, strikes, lockouts, labor disruption or any cause beyond the reasonable control of such Party.

### **15.3 Entire Agreement and Severance**

To the extent permitted by law, this Agreement constitutes the entire agreement between the Parties in respect of the Order. In the event that any provision of this Agreement is held to be invalid by a court or tribunal of competent jurisdiction, the remaining provisions of this Agreement will remain in full force and effect.

### **15.4 Governing law**

This Agreement shall be governed by the laws of the state of New South Wales. Paramount Safety and the Purchaser submit to the exclusive jurisdiction of the courts of New South Wales.