



## TERMS AND CONDITIONS OF SALE

These are the terms and conditions of sale of Cool Solutions Shade Sails Pty Limited to all transactions between it and its customers.

- **DEFINITIONS AND INTERPRETATION**
  - **'Cool Solutions'** means Cool Solutions Shade Sails Pty Limited ABN 55 938122730 and its successors, assigns, subsidiaries, affiliates and associations.
  - **'Customer'** means the person to whom the quotation is addressed and/or any person who accepts it.
  - **'Contract'** means the contract for the sale of the goods and the supply of the services specified in the Order and subject to these terms and conditions of sale.
  - **'Security Deposit'** means the security deposit sum (if any) shown on the quotation which is payable by the customer.
  - **'Goods'** means the goods the subject of the quotation.
  - **'Order'** means the acceptance of the quotation in whole or in part by the customer.
  - **'Person'** includes companies.
  - **'Services'** means the services, if any, to be supplied with the goods and the subject of the quotation.
  - Headings are for convenience only and do not form part of these terms and conditions of sale.
- **WARRANTY**
  - Any person who accepts the quotation warrants he/she is the duly authorized agent of the customer for the purpose of placing the Order.
- **TERMS OF PAYMENT**
  - Payment is subject to any terms agreed between Cool Solutions and the customer in writing and in the absence of such written agreement, the customer must make payment in full at the time of placing the Order.
  - The customer is not entitled to defer, offset or withhold payment in whole or part for any reason unless agreed by Cool Solutions in writing.
  - If at any time monies are overdue, then at the option of Cool Solutions the whole account balance shall become immediately due and owing by the customer.
  - Cool Solutions may charge interest on all overdue accounts at the rate of 2% per month calculated on daily rests and to charge any expenses incurred in collecting or attempting to collect any overdue monies, including any debt collector's expenses incurred, or to be incurred.
- **ABILITY TO SUPPLY**
  - Any obligation of Cool Solutions to supply goods and services is subject to its ability to secure labour, materials and other services for the manufacture and supply of the goods and services.
  - Cool Solutions shall not be liable for failure to deliver the goods and/or supply the services within the stated time and the customer shall accept and pay for the goods and services notwithstanding any such failure to deliver within the stated time.
  - Cool Solutions shall not be liable for any failure to supply or deliver the goods or services due to strikes, fires, explosions, flood, riot, lock-out, injunction, interruption of transportation, accidents, war, governmental action or other circumstances beyond Cool Solutions control.
- **PRICES**
  - The prices on the quotation shall remain current for 30 days. After lapse of 30 days, Cool Solutions reserves the right to vary the change.
  - The quoted price is based upon the particular specifications of the goods current at the time of the quotation and Cool Solutions shall have the right to review the quoted price if there is any variation in specification.
  - The customer shall be responsible to Cool Solutions for any extra costs (which term shall include actual costs and imputed costs for storage, handling or demurrage) incurred by Cool Solutions as a result of failure of the customer to take delivery of the goods at the time and place specified.
  - Notwithstanding any other clause of these terms and conditions of sale, if any supply by Cool Solutions is subject to goods and services tax ("GST"), the customer must, unless the price on the quotation expressly states that GST is included, pay an additional amount to Cool Solutions.
- **DELIVERY**
  - 6.1 Delivery of the Goods shall be deemed to occur when they are handed to the Customer or his representative or are delivered to the premises or site or carrier nominated by the Customer and the Goods shall thereafter be at the Customer's risk.
    - Upon the signing of a delivery docket unless the contrary is noted in that docket, the Goods shall be deemed to have been delivered in good order and condition and if no person is present to sign the delivery docket then the Goods will be deemed to have been delivered in good order and condition. To the extent permitted by law, the Customer may only return Goods if a shortage, damage or other fault at the time of delivery is reported by the Customer to Cool Solutions within 24 hours of delivery and confirmed in writing within 7 days of such report.
    - The Customer agrees to accept delivery of the Goods or to make alternative delivery arrangements within 7 days of Cool Solutions notifying the Customer that the Goods are available for delivery. To the extent permitted by law, Cool Solutions reserves the right at its absolute discretion to charge a minimum fee of \$50 plus 2% of order value per week or part thereof,



if the Customer fails to accept or make alternative arrangements for delivery within 7 days of being advised that delivery is ready.

- Where the parties have agreed that the Customer will advise Cool Solutions of a “load date” (being a date for delivery), the Customer must:
  - give sufficient notice of the load date (being not less than the standard published lead time for the Goods to be manufactured and delivered, as set out in the Standard Fulfilment Process); and ensure that the load date is not more than 90 days after the date of the Order.
- To the extent permitted by law, the Customer shall be responsible to Cool Solutions for any extra costs (which term shall include actual costs and imputed costs for storage, handling or demurrage) incurred by Cool Solutions as a result of failure of the Customer to take delivery of the Goods at the time and place specified. Cool Solutions will be entitled to a lien over the Goods until such costs have been paid in full.
- If the Customer is required to give Cool Solutions notice of a load date under clause 6.4, and fails to do so within 90 days after placing the Order, Cool Solutions reserves the right to:
  - review and vary the price payable by the Customer under the Quotation to the extent permitted by law, if Cool Solutions considers it reasonable to increase those prices to reflect Cool Solution’s then current prices for such Goods (or equivalent Goods), in which case the Customer must pay the difference on demand; and/or
  - supply to the Customer equivalent Goods to those described in the Quotation but which may contain slight variations in design. Such variations will not materially affect the dimensions, operation or appearance of the Goods. Cool Solutions must inform the Customer of such variations at the time of delivery of the Goods.
- If the Customer fails to accept any part of the Goods which Cool Solutions has dispatched in conformity with the Contract and such part of the Goods is returned to Cool Solutions and re-dispatched subsequently, then Cool Solutions may, to the extent permitted by law, require the Customer to pay on demand a charge equal to double the current delivery charge.

#### • TITLE

7.1 Property in the Goods supplied by Cool Solutions to the Customer will not pass to the Customer until the money owing for those Goods and any other money owing by the Customer to Cool Solutions has been paid. The Customer in the meantime takes custody of the Goods as the fiduciary agent and bailee of Cool Solutions.

- Where the Customer does not make payment in respect of specific Goods, payment must be treated as having been made first in respect of Goods which have passed out of the possession of the Customer, and then in respect of whatever Goods still in the possession of the Customer Cool Solutions elects.
- Until the Goods have been paid for in full:
  - the Customer must store the Goods in such a manner as to show clearly that they are the property of Cool Solutions;
  - the Customer may sell the Goods, in the ordinary course of its business, but only as fiduciary agent of Cool Solutions. Any right to bind Cool Solutions to any liability to a third party by contract or otherwise is expressly negated. The Customer receives all proceeds, whether tangible or intangible, direct or indirect, of any dealing with the Goods (including any proceeds from insurance claims) in trust for Cool Solutions and must keep the proceeds in a separate bank account until the liability to Cool Solutions is discharged; and
  - the Customer agrees not to sell, assign, charge or otherwise encumber or grant any interest over any obligations which any third party may owe to the Customer as a result of the use, manufacture or resale of the Goods.
- The Customer irrevocably authorises Cool Solutions at any time, to enter any premises upon which the Goods are stored to enable Cool Solutions to:
  - inspect the Goods; and/or
  - if the Customer has breached these terms and conditions, reclaim possession of the Goods.
  - upon which the Customer’s records pertaining to the Goods are held to inspect and copy such records.
- The provisions of this clause apply notwithstanding any arrangement between the parties under which Cool Solutions or a related body corporate grants the Customer credit.

#### • GUARANTEE

- Subject to sub-clauses 8.2, 8.3 and 8.4 and to the proper handling, installation and operation of the Goods in accordance with Cool Solution’s standard specifications and recommendations and upon payment in full for the Goods, Cool Solutions warrants that the Goods are free from faulty workmanship and/or operating failure for the period specified on Cool



Solution's guarantee certificate. This warranty does not extend to any fault or failure arising from misuse or damage to the Goods by the Customer.

- Where the Goods, to the extent permitted by law, Cool Solutions will not be liable for a breach of warranty:
  - if the shade sail is not taken down in winter and/or winds over 90 kph
  - if the customer does not regularly maintain tension on the shade sail
  - if the customer delays reporting default thus resulting in further damage that could have been avoided
  - if the customer installs their shade sail incorrectly

#### WARRANTY

9.1 Subject to clause 8, the only conditions and warranties which are binding on Cool Solutions in respect of the state, quality or condition of the Goods and/or the Services (including advisory Services) are those imposed and required to be binding by statute (including the Trade Practices Act 1974 and, if applicable, the Domestic Building Acts) and to the extent permitted by law, the liability, if any, of Cool Solutions arising from the breach of such conditions or warranties shall, at Cool Solution's option, be limited to and completely discharged in the case of the Goods, either the replacement or the repair by Cool Solutions of the Goods and in the case of the Services, by the supplying of the Services again. The Customer must bear the costs of returning to Cool Solutions any Goods in respect of which a warranty claim is made. All other conditions and warranties whether expressed or implied by law in respect of the state, quality or condition of the Goods and/or the Services which may apart from this clause be binding on Cool Solutions are hereby expressly excluded.

- Subject to clause 9.1, Cool Solutions has no liability to any person for any loss or damage of any kind whatsoever including without limitation, for any indirect or consequential loss (including loss of profits or loss arising from any failure, breakdown, defect or deficiency in the Goods and/or the Services) even if due to the negligence of Cool Solutions arising out of or in connection with the Goods and/or the provision of the Services.

#### CANCELLATION AND DEFAULT

10.1 The Contract may be cancelled/varied by the Customer only with the written consent of Cool Solutions. To the extent permitted by law, Cool Solutions may require as a condition of its consent that the Customer pay reasonable charges for such cancellation/variation, which take into account expenses incurred by Cool Solutions to the date of cancellation/variation, including recompense for any commitments made by Cool Solutions in consequence of the Order and all other losses both actual and prospective, incurred as a result of such cancellation/variation.

- Cool Solutions shall be entitled to suspend delivery of the Goods or any part thereof and/or terminate the Contract if the Customer either fails to perform or observe any condition of the Contract including the terms of payment and/or delivery arrangements or if the Customer is made bankrupt, has a liquidator, receiver or official manager appointed for all or any part of his assets, or has a winding up order made against him or enters into any contract with creditors or voluntary insolvency administration. Such suspension and/or termination shall be without prejudice to and shall not affect any rights of Cool Solutions against the Customer prior thereto.
- Upon termination of the Contract by Cool Solutions the security deposit (if any) shall be forfeited to Cool Solutions which may either sue the Customer for breach of Contract or resell the Goods and any deficiency arising on such resale and all expenses of and incidental to such resale or attempted resale and the Customer's default shall be recoverable by Cool Solutions from the Customer as liquidated damages. Cool Solutions may retain any monies paid by the Customer on account of the Contract other than the security deposit forfeited, as security for any damages awarded to Cool Solutions for the Customer's default.

#### PRIVACY

11.1 Cool Solutions collects the personal information of its Customers to enable it to provide a Quotation for its Goods and/or Services and to provide its Customers with the Goods and/or Services they request. Cool Solutions may disclose the personal information of its Customers to third parties (such as contractors) that assist it in providing its Goods and Services. Customers may gain access to any personal information held about them upon request. To find out more about Cool Solution's commitment to the protection of privacy, Customers may ask for a copy of Cool Solution's Privacy Policy.

- Where Goods and/or Services are supplied to the Customer on credit the Customer irrevocably authorises Cool Solutions, its employees and agents to make such enquiries as it deems necessary to investigate the creditworthiness of the Customer including (without limitation) making enquiries from persons nominated as trade referees, the bankers of Cool Solutions or any other credit providers ("**Information Sources**") and the Customer authorises the Information Sources to disclose to Cool Solutions all information concerning the Customer which is within their possession and which is requested by Cool Solutions.



- NOTICES

12.1 A notice or other communication connected with these terms and conditions (“**Notice**”) has no legal effect unless it is in writing. In addition to any other method of service provided by law, the Notice may be sent by prepaid post to the address of the addressee set out in the Contract or subsequently notified; sent by facsimile to the facsimile number of the addressee; sent by email to the email address of the addressee; or delivered at the address of the addressee set out in the Contract or subsequently notified.

- If the Notice is sent or delivered in a manner provided by clause 12.1, it must be treated as given to and received by the party to which it is addressed:
  - if sent by post, on the 2nd Business Day (at the address to which it is posted) after posting;
  - if sent by facsimile or email before 5pm on a Business Day at the place of receipt, on the day it is sent and otherwise on the next Business Day at the place of receipt; or
  - if otherwise delivered before 5pm on a Business Day at the place of delivery, upon delivery, and otherwise on the next Business Day at the place of delivery.
- Despite clause 12.2.2:
  - a facsimile is not treated as given or received unless at the end of the transmission the sender’s facsimile machine issues a report confirming the transmission of the number of pages in the Notice;
  - an email message is not treated as given or received if the sender’s computer reports that the message has not been delivered; and
  - a facsimile or email message is not treated as given or received if it is not received in full and in legible form and the addressee notifies the sender of that fact within 3 hours after the transmission ends or by 12 noon on the Business Day on which it would otherwise be treated as given and received, whichever is later.

- MISCELLANEOUS

13.1 If any condition of a Customer’s Order conflicts with or purports to vary these conditions, then these conditions shall prevail to the extent of any inconsistency or variation unless otherwise agreed upon in writing.

- The only terms and conditions binding on Cool Solutions are those contained herein or otherwise agreed to in writing by Cool Solutions and those, if any, which are imposed and which cannot be excluded by law.
- To the extent permitted by law, the parties submit to the exclusive jurisdiction of the Courts located in the capital city of the Jurisdiction. The dispute must be determined in accordance with the law and practice applicable in the court.
- It is expressly agreed that any variations in colour or texture of any material used in the Goods shall not be a defect.
- If scaffolding is required it shall be the responsibility of the Customer.
- If hoisting facilities are required for the removal of the Goods from the delivery vehicle or for their installation those facilities shall all be the responsibility of and at the cost of the Customer.
- If anything in these terms and conditions or the Contract is unenforceable, illegal or void then it is severed and the rest of these terms and conditions and the Contract remain in force.