

Archskirt Aluminum Partitions Pty Ltd Terms and Conditions

1. Terms of Trading

All transactions with Archskirt Aluminium Partitions Pty Ltd ABN 47 110 316 204 of 25-27 Ordish Road, Dandenong South Victoria 3175 ("Archskirt Aluminium Partitions") and its subsidiaries and related bodies corporate, are subject to these terms and conditions ("Terms").

2. Agreement

The Customer agrees to adhere to these Terms.

3. Payment

3.1 By taking delivery or possession of the goods ("Goods") referred to in the invoice, the Customer agrees to pay the amount of the invoice ("Invoice Amount") to Archskirt Aluminium Partitions. Credit card payments will attract a payment processing fee of 1.5% plus GST.

3.2 Archskirt Aluminium Partitions may amend the price of the Goods and will notify the Customer by notice in writing.

3.3 Archskirt Aluminium Partitions will provide the Customer with an invoice at or around the time of supply of the Goods. The Customer must pay the Invoice Amount in full on or before the last day of the month following the month of invoice ("Invoice Due Date").

3.4 If the Customer does not pay the Invoice Amount by the Invoice Due Date, Archskirt Aluminium Partitions may place a stop order/credit at any time after the Invoice Due Date until the Customer pays the Invoice Amount in full.

3.5 In addition to clause 3.4, if 90 days from the Invoice Due Date elapses and the Customer has not paid the Invoice Amount in full Archskirt Aluminium Partitions may take the following action:

- (a) list the Customer with the Credit Reference Association of Australia;
- (b) require the Customer to pay interest at the Penalty Interest Rate specified in the *Penalty Interest Rates Act 1983 (Vic)* effective from time to time calculated daily on the balance outstanding on all invoices ("Overdue Amount") until the Overdue Amount is paid in full;
- (c) cancel the Customer's credit facility; and
- (d) commence legal proceedings to seek recovery of the Overdue Amount together with all fees and legal costs associated with recovery of the Overdue Amount.

3.6 The Customer shall not be entitled to set off against the Overdue Amount, by any money alleged to be owing by Archskirt Aluminium Partitions to the Customer.

4. Possession of Goods

By taking possession of the Goods the Customer acknowledges delivery and acceptance of the Goods in good condition and risk in the Goods passes to the Customer upon acceptance of delivery.

5. Retention of title to Goods and the Personal Property Securities Act 2009 ("PPS Act")

5.1 The Customer acknowledges and agrees that title to the Goods will only pass to the Customer when the Customer pays the Invoice Amount in relation to the Goods in full. Until Archskirt Aluminium Partitions receives payment of the Invoice Amount in full, the Customer will hold the Goods at Archskirt Aluminium Partitions' sole discretion as bailee only. Prior to receipt of the Invoice Amount in full, the Customer must:

- (a) not change or obscure in any way any identification marking that Archskirt Aluminium Partitions has placed on the Goods by lettering and numbering;
- (b) not sell the Goods except to a bona fide purchaser for value;
- (c) keep all proceeds from the sale of the Goods in trust for and on behalf of Archskirt Aluminium Partitions in a separate trust account; and
- (d) promptly pay the proceeds of any sale of the Goods to Archskirt Aluminium Partitions.

5.2 Payment of the proceeds from the sale of the Goods by the Customer to Archskirt Aluminium Partitions does not relieve the Customer from the obligation of paying Archskirt Aluminium Partitions the Invoice Amount.

5.3 The Customer acknowledges and agrees that the provisions this clause 5 constitute the security agreement between the Customer and Archskirt Aluminium Partitions creating a security interest in all present and future supplies. This security interest in the Goods extends to the proceeds of any sale or insurance claim in respect of the Goods and monies held in a separate account arising from the sale of the Goods for the purposes of PPS Act as amended and to the extent applicable the PPS Act applies.

5.4 The Customer acknowledges and warrants that any Goods purchased from Archskirt Aluminium Partitions are not purchased predominantly for personal, domestic or household purposes and you agree to indemnify Archskirt Aluminium Partitions against any loss or damage arising from a breach of such warranty.

5.5 The Customer acknowledges that Archskirt Aluminium Partitions may do anything reasonably necessary, including but not limited to registering any security interest which Archskirt Aluminium Partitions has over the Goods on the Personal Property Securities Register ("PPSR") established under section 147 of the PPS Act in order to perfect the security interest and comply with the requirements of the PPS Act.

5.6 The Customer agrees without charge to provide all information and do all things reasonably necessary to assist Archskirt Aluminium Partitions to undertake the matters set out in clause 5.3 above. The Customer waives pursuant to section 157(3)(b) of the PPS Act the right to receive notice of a verification statement in relation to any registration on the PPSR.

5.7 The parties agree that, pursuant to section 115 of the PPS Act, the following provisions in the PPS Act do not apply in relation to a security interest in the Goods to the extent, if any, mentioned in clause 5.3 (words in this provision have the same meaning as in the PPS Act):

- (a) section 95 (notice of removal of accession), to the extent that it requires us to give a notice to you;
- (b) section 125 (obligation to dispose of or retain collateral) in that we may extend the time for delay as we consider appropriate;
- (c) section 129 (disposal by purchase);
- (d) section 130 (notice of disposal), to the extent that it requires the secured party to give a notice to the grantor before disposal;
- (e) paragraph 132(3)(d) (contents of statement of account after disposal);
- (f) subsection 132(4) (statement of account if no disposal);
- (g) section 135 (notice of retention);
- (h) section 142 (redemption of collateral); and
- (i) section 143 (reinstatement of security agreement).

6. Customer warranties

- 6.1 The Customer warrants that the information it has provided to Archskirt Aluminium Partitions is true, accurate and correct and is supplied for the purpose of obtaining credit to purchase the Goods.
- 6.2 The Customer warrants that the persons' signature appearing on the credit application are duly authorised by the Customer to apply for credit on the Customer's behalf and to enter into these Terms.

7. Liability and warranty

- 7.1 Archskirt Aluminium Partitions shall not be liable for any loss, damage (including incidental, consequential or special damages), costs or expenses suffered by the Customer, to person or property, arising from the use of the Goods. Notwithstanding the foregoing, Archskirt Aluminium Partitions' liability in the aggregate shall be limited to an amount not exceeding the price for the Goods in question which has been paid for by the Customer.
- 7.2 Where legislation implies into these Terms any warranty and/or guarantee which cannot be excluded, the liability of Archskirt Aluminium Partitions for any breach of such guarantee or warranty shall be limited, at Archskirt Aluminium Partitions' option, to one or more of the following:
- (a) replacement of the Goods or the supply of equivalent Goods; or
 - (b) payment of the cost of replacing the Goods or acquiring equivalent Goods.
- 7.3 The Customer releases Archskirt Aluminium Partitions from and indemnifies and must continue to indemnify Archskirt Aluminium Partitions against any liability to the Customer or any third party for any incidental, indirect, consequential, special, punitive or exemplary damages whatsoever and for any loss of profit.
- 7.4 To the extent permitted by law, Archskirt Aluminium Partitions does not expressly or impliedly warrant:
- (a) the fitness of the Goods for a particular purpose;
 - (b) the merchantability of the Goods; or
 - (c) the condition of the Goods.

8. Termination

- 8.1 If the Customer fails to perform any of its obligations under these Terms, Archskirt Aluminium Partitions may immediately terminate the credit facility and delivery of any Goods by written notice of termination to the Customer.
- 8.2 The agreement between the parties will immediately terminate without notice, in the event that:
- (a) the Customer becomes insolvent, unable to pay its debts as they become due;
 - (b) the Customer discontinues its business;
 - (c) the Customer is assigned into bankruptcy, becomes bankrupt or makes an assignment in favour of its creditors;
 - (d) a receiver, manager, liquidator or administrator is appointed to deal with the Customer's assets;
 - (e) there is a change of control of the Customer; or
 - (f) the Customer dies or becomes incapacitated.
- 8.3 In the event that the agreement is terminated pursuant to this clause:
- (a) any money owing by the Customer to Archskirt Aluminium Partitions becomes immediately due and payable;
 - (b) the Customer will no longer be entitled to possession of the Goods and must immediately return the Goods to Archskirt Aluminium Partitions (at the Customer's cost) in accordance with these Terms. After termination of this agreement, nothing in these Terms gives the Customer any express or implied right or entitlement to, and the Customer must not attempt or purport to, sell, hire, lease, encumber, grant any right or interest (of any nature) in or over the Goods;
 - (c) the Customer hereby irrevocably authorises Archskirt Aluminium Partitions to enter upon any premises where the Goods are located, and to use such reasonable force as may be necessary, for the purpose of removal of any Goods sold to the Customer and to do so at the Customer's cost; and
 - (d) the Customer hereby irrevocably authorises Archskirt Aluminium Partitions to take possession of any property in, on or attached to the Goods which is not the Customer's property, and the Customer acknowledges and agrees that Archskirt Aluminium Partitions is not liable for its care or safekeeping.

9. Force Majeure

- 9.1 Archskirt Aluminium Partitions shall not be liable to Customer for any delay or failure to perform its obligations resulting from circumstances beyond its reasonable control, including but not limited to, war, act of terrorism, riot, insurrection, strike, trade dispute, fire, earthquake, flood, storm or other natural disaster; damage to personnel, material, equipment or other property; or shortage of any materials or labour (each an example of "force majeure").

10. Miscellaneous

- 10.1 Customer shall not transfer, assign or otherwise grant the services to any third party without Archskirt Aluminium Partitions' prior written consent.
- 10.2 Any notice required to be given and any Payment Claim made by Archskirt Aluminium Partitions under these Terms shall be in writing and delivered by post, facsimile, email or personal delivery and shall be deemed to have been received:
- (a) on the date that it was sent if delivered by email, personally or by facsimile; or
 - (b) two days after posting if sent by mail.
- 10.3 If any part of these Terms are found void and unenforceable, it will not affect the validity of the balance of these Terms, which shall remain valid and enforceable according to its terms.
- 10.4 The failure of a party to insist on the performance of an obligation hereunder shall not be deemed to be a waiver of such obligation or of any other obligation.
- 10.5 Archskirt Aluminium Partitions reserves the right to amend these Terms by notice in writing to the Customer.
- 10.6 The laws of Victoria govern these Terms.