**AUSTRALIA BUILDING MATERIALS SUPPLY PTY LTD**

**trading as AWESOME HOME CENTRE**
**(RETAIL CUSTOMERS – PROVISION OF PRODUCTS AND SERVICES)**

Including Terms and Conditions

**Customer Details**

|  |
| --- |
| **COMPANY CUSTOMER PLEASE COMPLETE** |
| Registered Name of Entity: |  |
| Trading / Business Name(s) (if applicable): |  |
| ACN: | ABN:  |
| **INDIVIDUAL / PARTNERSHIP / SOLE TRADER / TRUST CUSTOMER PLEASE COMPLETE (Delete as applicable)** |
| Full Name of Individual:  |  |
| If applicable, Partnership / Sole Trader/ Trustee Name: |  |
| Trading / Business Name(s) (if applicable): |  | ABN:  |
| Does the Applicant trade as a Trading Trust? [ ]  Yes [ ]  No Type of Trust:[ ]  Unit [ ]  Discretionary  |
| **ALL APPLICANTS PLEASE COMPLETE** |
| Postal Address: |  |
| Business Address (if applicable): |  |
| Telephone: | Facsimile: |
| Email address: |  |
| **ACCOUNT / ORDER CONTACT DETAILS**  |
| Contact Name (accounts):  | Contact Name (orders): |
| Contact telephone (accounts): | Contact telephone (orders): |
| Contact email (accounts): | Contact email (orders): |

|  |
| --- |
| **ALL APPLICANT/S MUST COMPLETE THE DECLARATION AND AGREEMENT BELOW** |
| **The Applicant/s:**1. Warrants that all information supplied in this form to Australia Building Materials Supply Pty Ltd (ACN 660 824 573) trading as Awesome Home Centre (“AHC”) is true and correct.
2. Agrees that the Terms and Conditions of Trade will apply to the supply of all products and/or services from AHC to the Applicant.
3. Agrees that the payment term is as follows:
* Deposit: 20% of the Price by electronic funds transfer (or such other method agreed in writing by AHC) within 5 days of the date of acceptance of the relevant quotation by the Applicant. The Applicant acknowledges that AHC is not obliged to commence the supply of products and/or services until it has received the deposit in clear funds.
* Balance: 80% of the Price by electronic funds transfer (or such other method agreed in writing by AHC) within 14 days of the delivery of the goods ordered and if applicable, the completion of the installation services at the site address.
1. Acknowledges that AHC may in its absolute discretion charge a cleaning fee if the site needs to be cleaned in order to carry out the installation services to be provided by AHC.
2. Acknowledges that any product purchased under a sales promotion cannot be exchanged or refunded unless it is faulty.
3. Acknowledges that:
	1. AHC may change the Terms and Conditions of Trade upon written notice to the Applicant; and
	2. subject to the Terms and Conditions of Trade, the Applicant is bound by such changed terms in respect of all subsequent transactions.
4. Undertakes to inform AHC immediately of any change in details set out in this form or change in proprietors, partners or directors of the Applicant.
 |
| Signed on behalf of the Applicant by:[ ] INDIVIDUAL/Sole Trader [ ] PARTNERS [ ] Director/S [ ] authorised officer/s |
| 1: | Name: | Signature: |
|  | Position: | Date: |
| 2: | Name and Title: | Signature: |
|  | Position: | Date: |

**TERMS AND CONDITIONS OF TRADE**

**1. DEFINITIONS**

* 1. “AHC” means Australia Building Materials Supply Pty Ltd ACN 660 824 573 trading as Awesome Home Centre.
	2. “Customer” means the entity that has contracted with AHC to buy Goods or receive the provision of Services.
	3. “Goods” means any goods supplied by AHC to the Customer (or ordered by the Customer but not yet supplied) including, and in no way limited to, stock.
	4. “PPSA” means Personal Property Securities Act 2009.
	5. “Price” means the price of the Goods or the provision of Services to be supplied by AHC to the Customer as set out in the quotation accepted by the Customer.
	6. “Security Interest” has the meaning given to it in the PPSA.
	7. “Services” means the installation of the Goods as set out in the quotation accepted by the Customer.

1. **GENERAL**
	1. The Customer acknowledges that these Terms and Conditions of Trade take precedence over any terms and conditions contained in any document provided by the Customer.
2. **QUOTATION**
	1. Where a quotation is given by AHC for Goods and/or Services:
		1. unless otherwise agreed, the quotation shall be valid for 7 days from date of issue;
		2. the quotation shall be exclusive of GST unless specifically stated to the contrary.
	2. Where Goods and/or Services are required in addition to the quotation, the Customer agrees to pay for the additional price for such Goods and/or Services.
3. **ACCEPTANCE**
	1. Once a quotation has been accepted by the Customer, it will constitute a binding contract between AHC and the Customer and acceptance of these Terms and Conditions of Trade.
4. **PAYMENT**
	1. The Customer must pay the Price for the Goods and/or Services ordered in the manner specified in the quotation or as set out in the credit application.
	2. If AHC requires the payment of a deposit for the supply of Goods and/or Services, the parties acknowledge and agree that such deposit paid by the Customer to AHC is not refundable unless AHC fails to supply the Goods and/or the Services.
	3. Payment for any amount outstanding shall be deemed immediately due and payable in any of the following circumstances:
		1. there is non payment of any sum by the due date;
		2. the Customer is bankrupted or enters administration, liquidation or receivership;
		3. a Court judgment is entered against the Customer and remains unsatisfied for seven (7) days;
		4. any material adverse change in the financial position of the Customer.
	4. Interest accrues on any amount owing after the due date at the rate of 1.0% per month, calculated daily from the first day overdue until payment.
	5. All expenses, disbursements, collection and legal costs incurred by AHC in connection with the enforcement of any rights and/or preservation of any rights contained in these Terms and Conditions of Trade shall be paid by the Customer on a full indemnity basis.
	6. Receipt of a cheque shall not constitute payment until it results in AHC receiving cleared funds for the entire amount.
5. **DELIVERY**
	1. AHC will use commercially reasonable endeavours to:
		1. deliver the Goods to the Customer’s nominated delivery address. AHC reserves the right to charge a delivery fee if the delivery address is outside of Adelaide’s metropolitan area;
		2. if applicable, provide the Services at the delivery address by the estimated completion date;
		3. advise the Customer in advance if it is unable to make full and timely supply and/or delivery of the ordered Goods or Services. AHC will not be liable whatsoever in relation to the late supply, delivery or installation of the Goods or the late provision of Services.
	2. If the Customer requests that AHC delay delivery of the Goods and/or provision of Services, AHC may in its absolute discretion grant the delay in which case the Goods shall be held by AHC at the Customer’s sole risk and expense and if required by AHC, the Customer shall pay to AHC any out of pocket expenses incurred by AHC in respect of such delay.
	3. If AHC is unable to deliver all of the Goods to the Customer in a single delivery, AHC may in its absolute discretion deliver the Goods to the Customer by instalments.
	4. AHC will not be liable in any way for any loss of trade, revenue or profit incurred or suffered by the Customer in the event of AHC’s non-delivery or late delivery of the Goods or the non-installation or late installation of the Goods.
6. **RISK TO GOODS AND DELIVERY**
	1. Risk in any Goods shall pass when the Goods are delivered to the Customer at the Customer’s nominated delivery address. It is the Customer’s obligation to insure the Goods from the point of delivery.
	2. The Customer is responsible for unloading the Goods at the point of delivery and checking all Goods upon receipt of the Goods.
7. **AMENDMENT OR CANCELLATION**

Orders placed with AHC cannot be varied or cancelled without the written approval of AHC. In the event that AHC accepts the variation or cancellation of any order placed, it shall be entitled to charge a reasonable fee in respect of the cancellation or variation, including but not limited to handling and restocking fee, fee for the processing and acceptance of the Customer’s order and request for cancellation or variation.

1. **TITLE AND PERSONAL PROPERTY SECURITIES ACT 2009 (PPSA)**

**Goods**

* 1. Whilst risk in the Goods passes on delivery, legal and equitable title in the Goods shall remain with AHC until it has received payment in full for all monies owed by the Customer to AHC for the Goods.
	2. Until AHC has received payment in full for all monies owed by the Customer for the Goods, AHC reserves the following rights:
		1. legal and equitable ownership of the Goods;
		2. the right to enter the Customer’s premises and retake possession of the Goods;
		3. the right to keep or resell any Goods repossessed under sub-clause 9.2.2; and
		4. any other rights it may have at law or under the PPSA.
	3. Where, pursuant to sub-clause 9.2.3:
		1. AHC resells the Goods repossessed, it is agreed that AHC may credit the Customer’s account with the net proceeds of sale (after deduction of all repossession, storage, selling and other costs); or
		2. AHC retains possession of the repossessed Goods, it is agreed that AHC may credit the Customer’s account with the invoice value less such sum as AHC reasonably determines on account of wear and tear, depreciation, obsolescence, loss of profit and costs.
	4. AHC shall not be liable for any costs, damages, expenses or losses incurred by the Customer or any third party as a result of any action taken to repossess the Goods.
	5. Until AHC receives payment for Goods in full, the Customer acknowledges that AHC has a Purchase Money Security Interest (PMSI) which attaches over the Goods and their proceeds and a Security Interest in relation to other amounts owed by the Customer to AHC.

**General**

* 1. Upon assenting to these Terms and Conditions of Trade, the Customer acknowledges and agrees that these Terms and Conditions of Trade constitute a security agreement for the purposes of the PPSA.
	2. The Customer undertakes to do anything (such as obtaining consents, producing documents, producing receipts and getting documents completed and signed) which AHC asks and considers reasonably necessary for the purposes of:
		1. ensuring that a PMSI and/or Security Interest is enforceable, perfected and effective;
		2. enabling AHC to apply for any registration, or give any notification, in connection with the Security Interest created under these Terms and Conditions of Trade so that the PMSI and/or Security Interest has the priority required by AHC.
	3. To the extent permitted by law, the Customer irrevocably waives its right to:
		1. receive notices or statements under sections 95, 121(4), 125, 130, 132(3)(d), 132(4) and 135 of the PPSA;
		2. redeem the Goods under section 142 of the PPSA;
		3. reinstate the Agreement under section 143 of the PPSA;
		4. receive a Verification Statement.
	4. Nothing in this clause 9 prevents AHC from taking collection or legal action against the Customer to recover any monies owed from time to time.
1. **ALTERATION**
	1. Any alteration to an order requested by the customer needs to be provided to AHC in writing as soon as reasonably practical. AHC may, but will not be obligated to, alter the order if in the opinion of AHC the alterations cannot be accommodated.
	2. Where AHC agrees to alter the order, AHC may delay the delivery and/or installation of the Goods.
2. **OTHER CONDITIONS OF SUPPLY**
	1. Any typographical, clerical or other error or omission in any sales literature, quotation pricelist, acceptance of offer, confirmation of order, invoice or other document or information issued by AHC will be subject to correction without any liability on the part of AHC.
	2. Goods cannot be returned and the Services cannot be cancelled for change of mind. Any claim relating to Goods (including defective goods or shortage of goods) and/or Services must strictly comply with clause 13.
3. **DISPUTES**
	1. If a dispute arises out of or in relation to the Terms and Conditions of Trade, the parties to the dispute expressly agree to endeavour in good faith to settle the dispute by mediation administered by the Australian Commercial Dispute Centre (ACDC) before having recourse to arbitration or litigation. In the event of such a dispute:
		1. a party claiming that a dispute has arisen must give written notice to the other party to the dispute specifying the nature of the dispute;
		2. on receipt of the notice specified in 12.1.1, the parties to the dispute must within seven (7) days of receipt of the notice seek to resolve the dispute;
		3. if the dispute is not resolved within seven (7) days or within such further period as the parties agree then the dispute is to be referred to ACDC;
		4. a mediation shall be conducted in accordance with ACDC mediation guidelines which set out the procedures to be adopted, the process of selection of the mediator and the costs involved and which terms are hereby deemed incorporated;
		5. each party agrees to bear one half of the costs of the mediation;
		6. all discussions for the purpose of mediation are without prejudice; and
		7. no document brought into existence specifically for the purpose of mediation can be evidence in any subsequent litigation by a party.
4. **PRODUCT LIABILITY**
	1. Subject to the Customer’s rights under Schedule 2 of the Competition and Consumer Act 2010 (if applicable), no claim relating to Goods (including defective goods or shortage of goods) and/or Services will be accepted by AHC unless made in writing within 72 hours of delivery (if the claim relates to Goods) or completion of installation of Services (if the claim relates to Services). In notifying AHC, the Customer will provide sufficient details of the claim, including:
		1. details of the claim;
		2. quantity of affected Goods (if the claim relates to Goods) or details relating to the defective Services (if the claim relates to Services);
		3. quotation/purchase order number;
		4. location and condition of the affected Goods/Services;
		5. an estimate of the quantum of the claim; and
		6. dated photographic evidence where necessary and available.
	2. If the Customer fails to comply with clause 13.1, AHC will have no liability under any such claim and the Customer agrees to waive and release AHC from any such claim and the Customer grees not to bring any claim against AHC in relation to a defect, damage or shortage of the Goods or a defect in the Services.
	3. AHC will not be liable for damage or defect to the Goods/Services which arises from:
		1. inadequate or improper handling, storage or maintenance of the Goods/Services by the Customer or a third party;
		2. any contamination or leakages caused or induced by the Customer or a third party;
		3. any modification to the Goods/Services by the Customer or a third party;
		4. any misuse of the Goods by the Customer or a third party.
	4. All implied conditions, warranties and undertakings other than the statutory guarantees set out in Schedule 2 of the Competition and Consumer Act 2010 (if applicable) are expressly excluded to the extent permitted by law.
	5. To the fullest extent permitted by law, the Supplier’s liability for any breach of any condition or warranty in these Terms and Conditions of Trade or implied by legislation in Australia will be limited, at AHC’s election, to one or more of the following:
		1. if the breach relates to the Goods:
			1. the replacement of the Goods or the supply of equivalent products;
			2. the repair of such Goods;
			3. the payment of the cost of replacing the Goods or of acquiring equivalent products; or
			4. the refund of that part of the Price relating to the defective Goods;
		2. if the breach relates to the Services:
			1. the supply of the Services again; or
			2. the payment of the cost of having the Services supplied again.
	6. To the fullest extent permitted by law, AHC’s liability to the Customer, whether for breach of contract, tort (including negligence), strict liability or otherwise under or in connection with:
		1. the supply of Goods shall not in any event exceed an amount equal to the Price paid by the Customer for the relevant defective Goods;
		2. the supply of Services shall ot in any event exceed an amount equal to the Price paid by the Customer for the relevant defective Services,

and AHC will have no liability for any indirect or consequential loss and/or expense suffered or incurred by the Customer or any liability to third parties suffered or incurred by the Customer.

* 1. Should AHC wish to recall any Goods as a result of proper action by a regulatory authority or otherwise, the Customer must take such action as AHC reasonably requires in assisting AHC with product recall. The Customer must not make any public or private statement about the recall without the prior written approval of AHC.
1. **JURISDICTION**
	1. These Terms and Conditions of Trade and all matters concerning the business relationship between AHC and the Customer shall be governed by the law of the State of South Australia and the parties submit to the exclusive jurisdiction of the Courts of South Australia for the conduct of any litigation.
2. **MISCELLANEOUS**
	1. The Customer must not assign its rights or obligations under these Terms and Conditions of Trade without the prior written consent of AHC which consent may be withheld by AHC in its absolute discretion. AHC may assign its rights or obligations under Terms and Conditions of Trade in its absolute discretion.
	2. AHC shall not be liable for delay or failure to perform its obligations if the cause of the delay or failure is beyond its control.
	3. Failure by AHC to enforce any of the terms and conditions contained in these Terms and Conditions of Trade shall not be deemed to be a waiver of any of its rights or obligations under these Terms and Conditions of Trade.
	4. If any provision of these Terms and Conditions of Trade shall be invalid, void or illegal or unenforceable, the validity, existence, legality and enforceability of the remaining provisions shall not be affected.
	5. Any variation of the terms and conditions contained in these Terms and Conditions of Trade must be agreed to in writing by AHC for it to have any legal effect.